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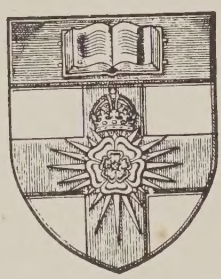

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COMMISSIONERS:

SIXTEEN VOLUMES.

—(3.)—

CHURCH ESTATES;
ECCLESIASTICAL; EMIGRATION;
ENGLISH AND IRISH LAW AND CHANCERY;
REGISTERS OF LAND RIGHTS (SCOTLAND); TITHES.

Session

5 *February* —— 28 *July* 1868.

VOL. XV.

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1868.

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FIRST REPORT

OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO INQUIRE INTO

THE SUPERIOR COURTS OF COMMON LAW AND COURTS OF CHANCERY

OF

ENGLAND AND IRELAND.

Presented to both Houses of Parliament by Command of Her Majesty.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

4001. 1863.

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Lloyd, B. Clifford, Q.C. -
Rogers, James, Q.C. - - -
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COMMISSION.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To Our right trusty and well-beloved Councillor Sir John Romilly, Knight, Master of the Rolls in England, Our right trusty and well-beloved Councillor Francis Blackburne, Lord Justice of Our Court of Appeal in Chancery in Ireland, Our right trusty and well-beloved Councillor James Henry Monahan, Chief Justice of Our Court of Common Pleas in Ireland, Our right trusty and well-beloved Councillor Abraham Brewster, Our right trusty and well-beloved Councillor Joseph Napier, Our trusty and well-beloved Sir William Page Wood, Knight, a Vice-Chancellor, Our trusty and well-beloved Sir James Shaw Willes, Knight, One of the Justices of Our Court of Common Pleas in England, Our trusty and well-beloved Henry George Hughes, Esquire, One of the Barons of Our Court of Exchequer in Ireland, Our trusty and well-beloved Sir William Atherton, Knight, Our Attorney General for England, Our right trusty and well-beloved Councillor Thomas O'Hagan, Our Attorney General for Ireland, Our trusty and well-beloved Sir Roundell Palmer, Knight, Our Solicitor General for England, Our trusty and well-beloved James Anthony Lawson, Esquire, Our Solicitor General for Ireland, Our trusty and well-beloved Sir Hugh MacCalmont Cairns, Knight, Our trusty and well-beloved George Markham Giffard, Esquire, One of Our Council learned in the Law, Our trusty and well-beloved Robert Bayly Follett, Esquire, and Our trusty and well-beloved Richard John Theodore Orpen, Esquire, greeting:

Whereas an humble Address has been presented to Us by the Lords Spiritual and Temporal in Parliament assembled, praying that We would be graciously pleased to issue a Royal Commission to inquire into the following Matters, with a view to reduce Costs to Suitors and the Expenditure of the Public Money, and to assimilate, so far as may be practicable, the Administration of Justice in England and Ireland:

1. The Constitution, Establishment, Practice, Procedure, and Fees of the Superior Courts of Common Law in Ireland.
2. The Differences between the Constitution and the Forms of Practice, Procedure, and Fees of the Courts of Chancery of England and of Ireland.

Know ye, therefore, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and do by these Presents authorize and appoint, you the said Sir John Romilly, Francis Blackburne, James Henry Monahan, Abraham Brewster, Joseph Napier, Sir William Page Wood, Sir James Shaw Willes, Henry George Hughes, Sir William Atherton, Thomas O'Hagan, Sir Roundell Palmer, James Anthony Lawson, Sir Hugh MacCalmont Cairns, George Markham Giffard, Robert Bayly Follett, and Richard John Theodore Orpen, or any Six or more of you, to make a diligent and full Inquiry into and to report upon the following Matters, with a view to reduce Costs to Suitors and the Expenditure of the Public Money, and to assimilate, so far as may be practicable, the Administration of Justice in England and Ireland:

1. The Constitution, Establishment, Practice, Procedure, and Fees of the Superior Courts of Common Law in Ireland.
2. The Differences between the Constitution and the Forms of Practice, Procedure, and Fees of the Courts of Chancery of England and of Ireland.

And for the better Discovery of the Truth in the Premises, We do by these Presents give and grant to you, or any Six or more of you, full Power and Authority to call before you, or any Six or more of you, such and so many of the Officers and Clerks of Our said Courts, and all such other Persons as you shall judge necessary, by whom you may be the better informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Six or more of you, full Power and Authority to cause all or any of the Officers and Clerks of any of Our said Courts to bring and produce before you, or any Six or more of you, all Rolls, Records, Orders, Books, Papers, or other Writings belonging to any of Our said Courts, or to any of the Offices within the same.

And We do further by these Presents give and grant unto you, or any Six or more of you, full Power and Authority, when the same shall appear to be requisite, to administer an Oath to any Person or Persons whatsoever, to be examined before you, or any Six or more of you, touching or concerning the Premises.

And Our further Will and Pleasure is, that you do within One Twelvemonth after the Date of this Our Commission, or as soon as the same can conveniently be done (using all Diligence), certify to Us in Our Court of Chancery in England, under the Hands and Seals of you, or any Nine or more of you, what you shall have done in the Premises.

And We further will and command that this Our Commission shall continue in full Force and Virtue, and that you, Our said Commissioners, or any Six or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And We hereby command all and singular Our Justices of the Peace, Sheriffs, Mayors, Bailiffs, Constables, Officers, Ministers, and all other Our loving Subjects whatsoever, as well within Liberties as without, that they be assistant to you, and each of you, in the Execution of these Presents.

And for your further Assistance in the Execution of these Presents, We have made choice of Our trusty and well-beloved William Neilson Hancock, Doctor of Laws, and Our trusty and well-beloved Henry Robert Vaughan Johnson, Esquire, to be Secretaries to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion may require.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster, the Thirteenth Day of December, in the Twenty-fifth Year of Our Reign.

By Warrant under the Queen's Sign Manual.

C. ROMILLY.

Seal.

SUPPLEMENTAL COMMISSION.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To Our right trusty and well-beloved Councillor Sir John Romilly, Knight, Master of the Rolls in England, Our right trusty and well-beloved Councillor Francis Blackburne, Lord Justice of Our Court of Appeal in Chancery in Ireland, Our right trusty and well-beloved Councillor James Henry Monahan, Chief Justice of Our Court of Common Pleas in Ireland, Our right trusty and well-beloved Councillor Abraham Brewster, Our right trusty and well-beloved Councillor Joseph Napier, Our trusty and well-beloved Sir William Page Wood, Knight, a Vice-Chancellor, Our trusty and well-beloved Sir James Shaw Willes, Knight, One of the Justices of Our Court of Common Pleas in England, Our trusty and well-beloved Henry George Hughes, Esquire, One of the Barons of Our Court of Exchequer in Ireland, Our trusty and well-beloved Sir William Atherton, Knight, Our Attorney General for England, Our right trusty and well-beloved Councillor Thomas O'Hagan, Our Attorney General for Ireland, Our trusty and well-beloved Sir Roundell Palmer, Knight, Our Solicitor General for England, Our trusty and well-beloved James Anthony Lawson, Esquire, Our Solicitor General for Ireland, Our trusty and well-beloved Sir Hugh MacCalmont Cairns, Knight, Our trusty and well-beloved George Markham Giffard, Esquire, One of Our Council learned in the Law, Our trusty and well-beloved Robert Bayly Follett, Esquire, and Our trusty and well-beloved Richard John Theodore Orpen, Esquire, greeting:

Whereas in pursuance of an humble Address presented to Us by the Lords Spiritual and Temporal in Parliament assembled, praying that We would be graciously pleased to issue a Royal Commission to inquire into the following Matters, with a view to reduce Costs to Suitors and the Expenditure of the Public Money, and to assimilate, so far as may be practicable, the Administration of Justice in England and Ireland:—

1. The Constitution, Establishment, Practice, Procedure, and Fees of the Superior Courts of Common Law in Ireland;
2. The Differences between the Constitution and the Forms of Practice, Procedure, and Fees of the Courts of Chancery of England and of Ireland;

We did by our Letters Patent under Our Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date the Thirteenth Day of December in the Twenty-fifth Year of Our Reign, authorize and appoint you, or any Six or more of you, to make a diligent and full Inquiry into and to report upon the Matters aforesaid:

And for the better Discovery of the Truth in the Premises, We did by Our said Letters Patent give and grant to you, or any Six or more of you, full Power and Authority to call before you, or any Six or more of you, such and so many of the Officers and Clerks of Our said Courts, and all such other Persons as you should judge necessary, by whom you might be the better informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever:

And We did thereby give and grant unto you, or any Six or more of you, full Power and Authority to cause all or any of the Officers and Clerks of any of Our said Courts

to bring and produce before you, or any Six or more of you, all Rolls, Records, Orders, Books, Papers, or other Writings belonging to any of Our said Courts, or to any of the Offices within the same:

And We did further give and grant unto you, or any Six or more of you, full Power and Authority, when the same should appear to be requisite, to administer an Oath to any Person or Persons whatsoever, to be examined before you, or any Six or more of you, touching or concerning the Premises, as by the said Letters Patent, amongst other Things therein contained, will more fully appear.

And whereas We have deemed it expedient that any Three or more of you Our said Commissioners should be enabled to act as a Quorum in the Execution of the Powers aforesaid in manner herein-after expressed.

Know ye therefore, that We have revoked and determined, and by these Presents do revoke and determine, so much and such Parts of the said recited Letters Patent as require the several Acts therein particularly mentioned to be done by any Six or more of you Our said Commissioners.

And We do hereby declare, that from henceforth it shall and may be lawful for any Three or more of you Our said Commissioners to do, execute, and perform all and every the Acts, Matters, and Things which by the said recited Letters Patent are directed to be done, executed, and performed by any Six or more of you Our said Commissioners.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster, the Eighth Day of July, in the Twenty-sixth Year of Our Reign.

By Warrant under the Queen's Sign Manual.

C. ROMILLY.

Seal.

FIRST REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN HER HIGH COURT OF CHANCERY

Your Majesty having been pleased to issue Commissions authorizing and appointing us "to make diligent and full inquiry into and to report upon the following matters, "with a view to reduce costs to suitors and the expenditure of the public money; and to "assimilate, so far as may be practicable, the administration of justice in England and "Ireland:

"1. The Constitution, Establishment, Practice, Procedure, and Fees of the Superior "Courts of Common Law in Ireland—

"2. The Differences between the Constitution and the Forms of Practice, Procedure, "and Fees of the Courts of Chancery of England and of Ireland"—

We, Your Majesty's Commissioners, in the execution of the duties thus imposed upon us, proceeded to examine and consider the subjects on which we are desired to report.

I.—Common Law Practice and Procedure.

1.—*Origin of the Difference therein in England and Ireland.—Question of Assimilation.*

In the first instance we thought it right to consider the diversity of practice and procedure in the Superior Courts of Common Law in England and Ireland in order to enable to us to form an opinion how far it was advisable that the administration of justice in both countries should be assimilated.

We accordingly came to the resolution of appointing two barristers, Mr. Jellett of the Irish bar, and Mr. Holland of the English bar, to draw up statements of the practice and procedure of the Superior Courts of Law in each country, in such manner as to point out the distinctions and differences which now exist.

Copies of the statements prepared for us by these gentlemen, are annexed to our Report.*

These statements exhibit many differences which, in our opinion, ought not to exist in the administration of justice in different portions of the same kingdom governed by the same system of laws.

It appears that the greater number of these differences are of recent origin, and have been caused by separate attempts having been made to reform the administration of justice in each of the two countries.

As early as the reign of King John, the Common Law of England was introduced into Ireland, and Courts of Justice were erected, and Judges appointed in conformity with the laws of England; and at a later period by Poyning's Act, 10 Henry 7. c. 22., of the Irish Parliament, explained by 3 & 4 Will. 3. c. 4., all the then existing Statute Law of England was extended to Ireland, and by several other Statutes between that period and 1782, further assimilations were introduced. In 1782 by the 21 & 22 Geo. 3. c. 48., known as Yelverton's Act, reciting that "a similarity of laws, measures, and "customs must necessarily conduce to strengthen and perpetuate that affection and "harmony which do, and at all times ought to, subsist between the people of Great "Britain and Ireland," the provisions of a considerable portion of the Statute Law of England were extended to Ireland.

An enactment of the Irish Parliament, 33 Henry the Eighth, session 2, cap. 3, sect. 3, which was made perpetual by the 11th Elizabeth, session 1, cap. 5, made provision for the residence in London at one of the Inns of Court of those entering for the Irish bar, that they might be, in the terms of the old enactment, "studying, practising, or "endeavouring themselves, the best they could, to come to the true knowledge and "judgment of the King's laws." The practice so established in the reign of King Henry VIII. has been acted upon and continued until the present day.

The existence of a separate legislature in Ireland up to the year 1800 led to some statutable provisions, which introduced peculiarities of procedure that did not extend to England, but these were few, and up to the year 1828 the differences were inconsiderable.

* Appendix, p. 1, *et seq.*

In 1828 a Commission was appointed to inquire into the Practice and Procedure of the Superior Courts of Common Law at Westminster. This Commission did not extend to Ireland, and in consequence, the reforms suggested by the Reports of the Commissioners were not applied to Ireland.

Thus neither the Act of Uniformity of Process in Courts of Law at Westminster (the 2 & 3 Will. 4. c. 39.), nor the Statute of 3 & 4 Will. 4. c. 69. amending it, extended to Ireland. In like manner, whilst New Rules of Pleading were adopted in England in 1834 (Pleading Rules, Hilary Term, 1834), no similar improvement was made in Ireland.

After a lapse of 17 years a Process and Practice Act was passed for Ireland (13 & 14 Vict. c. 18.), introducing many of the provisions contained in the Uniformity of Process Act, with others in addition.

In the same year a second Commission was issued to inquire into the Process, Practice, and System of Pleading in the Superior Courts of Common Law at Westminster; but it did not extend to Ireland.

The chief results of the labours of the Commission of 1850 were the English Common Law Procedure Acts of 1852 (15 & 16 Vict. c. 76.), 1854 (17 & 18 Vict. c. 15.), and 1860 (23 & 24 Vict. c. 126).

Until 1853 no change was introduced into the system of pleading in Ireland, which remained substantially the same as in England before 1834.

The Irish Common Law Procedure Act of 1853 adopted many of the provisions of the English Act of 1852, but introduced some important changes not contained in that measure.

The Irish Procedure Act of 1856, though mainly founded on the English Act of 1854, introduced further changes in Ireland. No attempt has yet been made to extend to Ireland any of the provisions of the important Act of 1860.

In the introduction of these extensive reforms in the law, a different practice has been pursued in each country. In England the different measures were the result of the inquiries of the respective Commissions to which we have referred. The Irish measures were not preceded by any such inquiry.

We have carefully considered the working of the system of pleading and practice introduced into Ireland by the Irish Common Law Procedure Act of 1853, and find that it has not been satisfactory, nor has it been attended with such advantage as would justify a continuance of a diversity of practice in the two countries. And we have come to a unanimous resolution, that the system of practice and procedure of the Courts of Common Law of England and Ireland should as far as practicable be assimilated.

In adopting this resolution, we feel that we are only in effect restoring that substantial uniformity which existed in the course and practice of the Superior Courts of Common Law in both countries from the reign of King John to that of King William the Fourth.

ii.—*Inquiries in Ireland as to Irish System, and Details of Assimilation.*

In dealing with the principle of assimilation we had to consider what portion of the practice and procedure peculiar to England it would be expedient to extend to Ireland, what portion peculiar to Ireland it would be expedient to extend to England, and whether there were any parts peculiar to the Irish system which it would be expedient to retain in Ireland and not extend to England.

With respect to the working of the reforms introduced by the English Common Law Procedure Acts, we had the third Report of the English Common Law Commissioners, dated so late as 1860, but with respect to the working of the Irish Common Law Procedure Acts, or the Irish system generally, there was no similar information.

We addressed a circular, accompanied by the Statements of Messrs. Jellett and Holland, to Irish Barristers having considerable experience in Irish Common Law Pleading and Practice, and to the Councils of the several Societies of Attornies and Solicitors in Ireland, and we requested answers to questions on this branch of our inquiry. We at the same time enclosed this circular, with the Statements which accompanied it, to the Lord Chancellor, the Master of the Rolls, the Judges of the Superior Courts of Common Law, and the Judges in Bankruptcy in Ireland, stating that we should be glad to receive, and pay every attention in our power to any observations it might occur to them to make with reference to the subject of the statements and questions.

We subsequently addressed a circular respecting practice and procedure to the Clerks of the Rules of the Superior Courts of Common Law in Ireland.

The answers to these circulars we have given in Appendix A. They contain a number of suggestions as to the details of assimilation, and as to improvements of the law.

The suggestions made, while indicating differences of opinion upon some points, substantially coincide upon the general question of assimilation.*

To facilitate the consideration of these suggestions, we had an analysis of them prepared, which we also give in Appendix A.,* and we have added a reference to these suggestions in the numerous cases where they have met with our approval, and have been made the subject of our recommendations.

iii.—*English Common Law Procedure Acts*, 1852, 1854, *and* 1860.

Several of the provisions of the English Acts of 1852 and 1854, but none of the provisions of the Act of 1860, have, as we have already noticed, been extended to Ireland. To carry out the principle of assimilation, so far as these Statutes are concerned, we have come to the following conclusions:—

We are of opinion—

1. That pleas of payment and set-off, and other pleadings capable of being construed distributively, should be taken distributively in Ireland as they are in England, pursuant to section 75th of the English Common Law Procedure Act, 1852.† — Pleas construed distributively.
2. That the English practice of not staying execution in ejectment, under the English Common Law Procedure Act, 1852, section 215, without security by recognizance against waste, should be adopted in Ireland.‡ — Ejectment—recognizance required in case of stay of execution.
3. That the provisions of the English Common Law Procedure Acts, 1852, sections 42–45, and 1854, section 32, by which questions of fact may, after writ issued and before judgment, by consent and leave of a Judge, be raised without pleadings, and may be entered and tried as any issue joined in an ordinary action, should be extended to Ireland.§ — Special cases as to facts without pleadings.
4. That section 60 of the Common Law Procedure Acts, 1854, should be extended to Ireland, providing that a judgment creditor may apply to examine orally the judgment debtor, as to any debts owing to him, before a Master or other person appointed by the Court or Judge.‖ — Examination of judgment debtor.

The Act of 1860 should, we think, be amended in the matters herein-after noticed, but subject to such amendments.

We are of opinion,—

5. That it is desirable to extend to Ireland the provisions of the English Common Law Procedure Act of 1860.¶ — Extension of English C. L. P. Act, 1860, to Ireland.

iv.—*Irish Common Law Procedure Act*, 1853.—*Provisions proposed to be repealed.*

Having fully considered the changes introduced by the Irish Common Law Procedure Act, 1853, and the evidence as to their operation, we have come to the conclusion that the English system is, in the following points, to be preferred to that introduced into Ireland by the Irish Common Law Procedure Act.

We are therefore of opinion—

1. That the English system of writ and declaration should be adopted in Ireland, instead of the summons and plaint.** — Writ and declaration.
2. That the right of a party to plead and demur by leave of the Court should be extended to all pleadings, as in England.†† — Pleading.
3. That the abolition of the general issue by the Irish Common Law Procedure Act, 1853, section 69, should be repealed, and the general issue, as regulated by Pleading Rules 6, 15, 16, 20, T. T., 1853, in England, should be adopted in Ireland.‡‡ — General issue.
4. That the mode of raising the issues in fact in Ireland should be assimilated to the mode of raising such issues in England.§§ — Issues in fact.
5. That the provisions of the Irish Common Law Procedure Act, 1853, enabling replevin to be joined with other personal actions should be repealed, and the law assimilated to that of England.‖‖ — Joinder of replevin with other actions.
6. ¶¶ That no benefit has arisen from the provision for allowing equitable defences to be pleaded in ejectment in Ireland and that such provision should be repealed.*** — Equitable defences in ejectment.

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* Appendix A., p. 137.

† Jellett and Holland's Statement, p. 9; Suggestions analyzed, &c., Appendix A., p. 141.

‡ St. p. 30; Sug., p. 149. § St., p. 10; Sug., p. 142. ‖ St., p. 20; Sug., p. 145.

¶ Sug., p. 137. ** St., p. 2; Sug., p. 138. †† St., p. 9; Sug., p. 141.

‡‡ St. p. 7; Sug., p. 140. §§ St., p. 9; Sug., p. 142. ‖‖ St., p. 5; Sug., p. 139.

¶¶ To what extent the opinion of Mr. Napier, as to the abolition of equitable defences, differs from that of the other Commissioners, will appear from his observations annexed to our Report, p. xxviii.

*** Jellett and Holland's Statement, p. 25; Suggestions, p. 148.

Over-marking execution.

7. That, the Irish Statute giving treble damages in case of over-marking an execution (Common Law Procedure Act, I., 1853, sect. 129) should be repealed, and the law assimilated to that of England.*

Discharge of debtor from custody.

8. That the provisions of the Irish Common Law Procedure Act, 1853, sect. 139, providing that payment by an execution debtor to the sheriff or gaoler should entitle the debtor to be discharged from custody should be repealed, and the law assimilated to that of England.†

Service on corporations.

9. That the provisions of the Irish Common Law Procedure Act, 1853, sect. 33, requiring notice of issuing writs against corporations to be inserted in the "Dublin Gazette" and in a local newspaper should be repealed, and the law assimilated to that of England.‡

Misjoinder of plaintiffs.

10. That the English practice by which notice of misjoinder of plaintiffs is not required, and an amendment may be made at the trial is to be preferred to the Irish practice.§

Non-joinder of defendants.

11. That the English practice by which neither the leave of the Court for a plea in abatement of non-joinder of defendants or plaintiffs, nor any order to amend is required, and non-joinder of defendants can only be taken advantage of by plea in abatement, is to be preferred to the Irish practice, as established by the Irish Common Law Procedure Act, 1853, sections 84, 87–89.‖

Time for pleading after particulars.

12. That the English practice under Rule 21, H. T., 1853, by which a defendant has the same time for pleading after the delivery of particulars under a Judge's order, as he had at the date of the order, unless the order should otherwise provide, should be extended to Ireland (Common Law Procedure Act, 1853, s. 46).¶

Venue local actions.

By the Irish Common Law Procedure Act of 1853, the venue in all personal actions, which includes many which would be local in England is made transitory in Ireland; on the other hand, actions by and against assignees of lessees have long been by express enactment transitory in Ireland, whilst they are local in England. These actions might advantageously be made transitory in England, and the venue in all other classes of actions which are now local in England ought to be local in Ireland.

We are of opinion,—

13. That in all actions (except actions by and against assignees of lessees) which are now local in England the venue should be local in Ireland.

v.—*Irish Common Law Procedure Act*, 1853.—*Provisions proposed to be extended to England.*

Whilst we have recommended the repeal of some of the provisions of the Irish Common Law Procedure Act of 1853, we have come to the conclusion that the Irish system is, in the following points, superior to that of England.

We are of opinion that the following provisions of the Irish Common Law Procedure Act, 1853, should be extended to England:—

Renewal of writs to save Statutes of Limitation.

1. That a renewed writ should not be available to prevent the operation of the Statutes of Limitation, unless the renewal shall be had by leave of the Court or a Judge, on an affidavit to satisfy the Court or a Judge that reasonable diligence was used to effect service of the writ (Common Law Procedure Act, 1853, s. 28–30).**

Pleading debts accruing after action brought.

2. That debts accruing after the commencement of an action may be pleaded in bar of the further maintenance of the action (Common Law Procedure Act, 1853, sect. 40).††

Joinder of actions in case of husband and wife.

3. That a husband may add claims in his own right in any action brought by husband and wife, for any cause of action accruing to the wife, and in respect of which she is necessarily joined as a co-plaintiff (Common Law Procedure Act, 1853, sect. 55).‡‡

Arrest of judgment.

4. That a judgment should not be arrested, stayed, or reversed by reason that the plaintiff or defendant, being under 21 years, sued or defended by attorney (Common Law Procedure Act, 1853, sect. 122).§§

Entry of part payment of a judgment.

5. That a memorandum may be entered of part payment and satisfaction on the record of judgments (Common Law Procedure Act, 1853, sects. 143 and 144).‖‖

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* Jellett and Holland's Statement, p. 18.
† St., p. 18; Sug., p. 145.
‡ St., p. 3; Sug., p. 139.
§ St., p. 6; Sug., p. 140.
‖ St., p. 6.
¶ St., p. 10.
** St., p. 3; Sug., p. 139.
†† St., p. 9; Sug., p. 141.
‡‡ St., p. 6; Sug., p. 140.
§§ St., p. 16.
‖‖ St., pp. 18, 19; Sug., p. 145.

6. That an heir, or personal representative of any party, plaintiff or defendant, may (for the purpose of bringing error) enter a suggestion of the death of such party, and that he is such legal representative (Common Law Procedure Act, 1853, sect. 167).* Error by legal representative of deceased.

7. That the plaintiff may have the amount of mesne rates ascertained at the trial of an ejectment (Common Law Procedure Act, 1853, sect. 202).† Joinder of action for mesne rates with ejectment.

We are also of opinion,—

8. That the Irish practice of more speedy execution after judgment is to be preferred (Common Law Procedure Act, 1853, s. 127.)‡ Time of execution after judgment.

9. That the Irish rule, that if the defendant is resident out of the jurisdiction, and has some agent or manager resident in Ireland, the Court may authorize service to be substituted on such agent (Common Law Procedure Act, 1853, s. 34.), should be extended (*mutatis mutandis*) to the case of a defendant having an agent or manager resident in England.§ Service of writs; defendants out of jurisdiction.

10. That a defendant applying for security for costs against an Irish plaintiff suing in England should be required to make an affidavit of merits (Common Law Procedure Act, 1853, s. 52). Security for Costs.

In the case of suggestions of facts upon motion for arrest of judgment, or for judgment *non obstante veredicto*, it is the practice in England to require the party insisting on the objection to satisfy the Court that there has been an omission of some substantial matter of fact, whereby he may have been prejudiced in the merits of his case, but there is no express enactment to that effect. In Ireland this practice was provided for by the Irish Common Law Procedure Act, 1853, s. 16. It will be proper, therefore, for sake of uniformity, to pass a declaratory enactment on the subject, applicable to both parts of the United Kingdom.

We are therefore of opinion,—

That the following provision of the Irish Common Law Procedure Act, 1853, should be extended to England.

11. That in motions to arrest judgment or for judgment *non obstante veredicto*, the party insisting on the objection must satisfy the Court that there has been an omission of some substantial matter of fact, whereby he may have been prejudiced in the merits of his case (Common Law Procedure Act, 1853, sect. 163).‖ Suggestions of facts upon motion for arrest of judgment or for judgment non obstante veredicto.

vi.—*Provisions of Irish Common Law Procedure Act, 1856, and other Statutes proposed to be extended to England.*

Some changes in the law of evidence introduced in England by the English Common Law Procedure Act of 1854, were extended to Ireland by the Irish Act of 1856. In the Irish Act these changes were made applicable to criminal cases. They should apply to such cases in England on the principle of English law that the general rules of evidence ought to be the same in civil and criminal cases.

The Act of 1856 also contains an improvement in the law of ejectment, enabling the Court to remove technical difficulties and to facilitate the trial of the substantial question between the parties; it also contains an improvement in the law of replevin.

By the operation of the Irish Statute of 11 Anne, c. 2. s. 6, and of the Irish Landlord and Tenant Act, 23 & 24 Vict. c. 154, the venue in actions by and against assignees of lessees is transitory in Ireland. This provision might with advantage be extended to England.

We are of opinion, therefore,—

1. That the provisions of the Common Law Procedure Act, 1854, extended by the Irish Common Law Procedure Act, 1856, sects. 25 to 30, to criminal cases, should be so extended to Courts exercising criminal jurisdiction in England.¶ Evidence.

2. That it is desirable that the power peculiar to Ireland to make an order directing temporary bars in ejectment to be removed in any case in which it shall appear to the satisfaction of the Court that an order to the same effect would be pronounced by the Court of Chancery, upon a proper application made to it for that purpose (Common Law Procedure Act, 1856, sect. 89.), should be extended to England.** Temporary bars in ejectment.

3. That the landlord in replevin should have judgment against the plaintiff for the arrears of rent ascertained on the inquiry, whether the value of the goods and chattels distrained shall amount to so much or not. This should be accompanied Replevin.

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* Jellett and Holland's Statement, p. 21; Suggestions, p. 146.
† St., pp. 25, 28; Sug., p. 149.
‡ St., p. 17. Sug., p. 145.
§ St., p. 4; Sug., p. 139.
‖ St., p. 16.
¶ St., p. 15; Sug., p. 144.
** St., p. 25; Sug., p. 149.

by a provision that nothing therein contained should alter or affect the liability of the sureties in the replevin bond (Common Law Procedure Act, 1856, sec. 101).*

Venue in actions by and against assignees of lessees.

4. That the statutable provisions in Ireland by which the venue in actions by and against assignees of lessees is transitory should be extended to England.

vii.—*English Practice and Procedure proposed to be extended to Ireland.*

The statements prepared for us and the answers we have received have brought the differences between the two countries as to certain branches of practice and procedure under our notice; and on full consideration we are of opinion that in the following matters the English practice is to be preferred. We recommend accordingly,—

Several counts on same cause of action.

1. That the English rule, that several counts on the same cause of action should not be allowed unless a Judge shall think them proper for determining the real question in controversy between the parties on its merits (Rules 1, 2, 3, Trinity Term, 1853), should be extended to Ireland.†

Effect of arrest under *ca. sa.*

2. That the consequences of taking the body under a writ of *capias ad satisfaciendum* should be the same in Ireland as in England, and that the provisions of the Irish Statutes, 33 Geo. 3. c. 42., and 35 Geo. 3. c. 30., which render the law on this subject in Ireland different from that in England, should be repealed.‡

Interest in error.

3. That the practice in England of the Court of Error, giving interest for delay of execution, whether the judgment is or is not affirmed, should be extended to Ireland.§

Expenses of witnesses.

4. That the Judges in Ireland should be authorized to settle a Schedule regulating the expenses and remuneration to be allowed to witnesses.

Proceedings on arrest under a Judge's fiat.

5. That in all cases of arrest under a Judge's fiat or order under 1 & 2 Vict. c. 110, a copy of the affidavit or affidavits upon which such fiat was granted should be lodged with the sheriff with the writ, and should by him be served on the defendant on his arrest, and that the plaintiff should be required to serve his writ at the time, or within three days after the arrest, and proceed to trial on the first opportunity.

Ejectment by mortgagee.

6. That the powers given to Courts of law in England in ejectment by mortgagee against mortgagor, to compel mortgagee to re-convey the mortgaged premises and deliver up the title-deeds, in case the mortgagor should pay or bring into Court the mortgage money, interest, and costs, be extended to Ireland.‖

Inspection of deeds.

7. That instead of the 64th section of the Irish Common Law Procedure Act, 1853, it should be declared and enacted that the power which exists in England of obtaining inspection and copies of documents in the possession or power of the opposite party, both as regards those relied on in the pleadings, and also as regards those not so relied on, but relating to the matter in dispute, shall be the same in Ireland as in England.

Power to send cases under 20*l.* to inferior Court.

In England, under the 17th section of 3 & 4 Will. 4. c. 42., the Court or a Judge was empowered to order any actions for a liquidated demand depending in the Superior Courts to be tried before the proper local Court of Record. This power was extended by Section 26 of the County Courts Act (19 & 20 Vict. c. 108) to sums not exceeding 50*l.* The principal of these enactments should, in our opinion, be extended to Ireland, but we think that 20*l.* would in Ireland be a more proper limit than 50*l.*

We are of opinion,—

8. That the Court or a Judge in Ireland should be empowered to order any actions for a liquidated demand depending in the Superior Courts, when the sum sought to be recovered does not exceed 20*l.*, to be tried before any Chairman of a County or Recorder of a Borough in Ireland as the Court or a Judge shall direct.

viii.—*Practice and Procedure peculiar to Ireland proposed to be retained in Ireland.*

We have hitherto dealt with the subject of assimilation between the two countries. There are, however, some portions of the practice and procedure peculiar to Ireland, which we are of opinion should be retained in Ireland.

Affidavit of service.

It would, we think, be unwise to disturb the form of affidavit by which the process server in Ireland is required to swear to acquaintance with the person of the defendant, but we do not think it necessary to recommend a change in the English form of affidavit, which is satisfactory in England.

Venue,

With respect to the subject of venue, we have already recommended that all actions except by and against assignees of lessees which are local in England should be local in

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* Jellett and Holland's Statement, p. 23; Suggestions, p. 147.
† St., p. 5; Sug., p. 139.
‡ St., p. 18; Sug., p. 145.
§ St., p. 21; Sug., p. 146.
§ Suggestions, p. 144.
‖ St. p. 30; Holland's St., p. 55; Sug., p. 148.

land, and that actions by and against assignees of lessees should be transitory in gland as in Ireland.

As to those actions which are transitory in England, but which are substantially, by ason of the character of the dispute and the residence of the witnesses, country causes, ere is a general tendency in the practice at Chambers to change the venue from London d Middlesex to the country, which tendency is caused by a reluctance to increase the rthen which the heavy Nisi Prius business in town imposes upon the London and ddlesex Juries.

In Ireland a similar reason does not exist, so that there is no balance of general incon-nience to disturb the practice which has prevailed in Ireland since 1853.

In this case we think the Irish practice should be retained in Ireland, but not extended England.

Writs of inquiry before Master.

In Ireland a system was introduced by the Common Law Procedure Act of 1853 of eeding writs of inquiry in Dublin before a Master of one of the Courts instead of before Sheriff. This system has been found satisfactory in Ireland. It appears that from importance of the other duties devolving on the Masters, and the satisfactory manner which the under Sheriffs in England discharge their functions, no similar change is uired in England. This appears, therefore, to be a case where the circumstances of the o countries render assimilation unadvisable.

Rotation of writs.

In 1850 a provision was introduced into the Irish Process and Practice Act substituting the distinct clerks of writs in each of the Superior Courts of Common Law in Ireland e Writ and Seal Office from which writs were to be issued in rotation, of twenty-five ch, for each of the three Superior Courts. The policy of the Act was to equalize the siness in the three Superior Courts. By the Irish Common Law Procedure Act of 53 this provision was continued. It appears to have been successful in leading to a bstantial equalization of the business of the three Courts, and at the same time does t substantially prevent the plaintiff in an action from choosing the Court in which he shes to proceed. We are, therefore, of opinion that no change should be made in this rt of the law of Ireland.

Consolidated Nisi Prius Court, Dublin.

In England there are five Judges in each of the Superior Courts of Common Law; t only four sit *in banco;* and the Puisne Judge of each Court, who is thus not required the business *in banco*, sits at Nisi Prius on certain days during term.

In Ireland there being only four Judges in each Court, a similar arrangement is not acticable, and by the Process and Practice Act, 13 & 14 Vict. c. 18, re-enacted by sh Common Law Procedure Act, 1853, one of the Puisne Judges of each Court in rn is required to sit during term for certain classes of the Nisi Prius cases of the three urts, and the Court so constituted is called the Consolidated Nisi Prius Court.

The difference in the number of Judges affords, therefore, a sufficient reason for taining the Consolidated Nisi Prius Court in Ireland, whilst its establishment is t required in England.

Arguing bills of exceptions in Court below.

In Ireland under Statute 28 Geo. 3. c. 31 (Irish), a bill of exceptions is argued in e Court below before the case is brought into the Court of Error. The great expense taking cases from Ireland to the ultimate tribunal of the House of Lords renders it visable that this practice should be retained in Ireland.

The several branches of Irish practice and procedure which should, we think, be ntinued in Ireland are contained in the following recommendations:—

We are of opinion,—

1. That the Irish practice of the process-server swearing to acquaintance with the person of the defendant should be continued.* — Form of affidavit of service.
2. That in transitory actions the provisions of the Irish Common Law Procedure Act, 1853, sect. 62, by which the right of changing the venue on the common affidavit is taken away, and power given to the Court to change it on a special affidavit, be retained in Ireland.† — Venue in transitory actions.
3. That speeding writs of inquiry before a Master instead of the Sheriff in Dublin under the Irish Common Law Procedure Act, 1853, sect. 101, and the Irish Common Law Procedure Act, 1856, sect. 99, should be retained in Ireland.‡ — Speeding writs of inquiry before a Master instead of the Sheriff in Dublin.
4. That the Writ Office in Ireland, and its system as constituted by the Statute 13 & 14 Vict. cap. 18., sects. 38 and 39, and by Common Law Procedure Act, 1853, sect. 15, should be continued in Ireland.§ — Rotation of writs.

* Jellett and Holland's Statement, p. 3; Suggestions, p. 139. † St., p. 6; Sug., p. 140.
‡ St., p. 11; Sug., p. 143. § St., p. 2; Sug., p. 138.

Consolidated Nisi Prius Court, Dublin.

5. That the Consolidated Nisi Prius Court in Ireland should be continued as at present constituted.

Bills of exceptions.

6. That the statutable provision in Ireland under which a bill of exceptions is argued in the Court below before the case is brought into the Court of Error should be retained.

ix.—*General Improvements in the Law in England and Ireland.*

Having concluded our recommendations, so far as they relate to the assimilation of the laws of the two countries, we have next to submit to Your Majesty our observations on some defects that are common to the laws of both England and Ireland, with suggestions of the means by which they may be removed, and the laws rendered more efficacious.

Annulling writs.

Defendants are sometimes inconvenienced by writs not being annulled where not prosecuted with effect, and we think provision should be made for annulling writs in personal actions and in ejectment when not prosecuted within a given time.

Evidence—unstamped documents.

The modern policy of guarding against an exclusion of evidence on a technical ground has led to a relaxation of the stamp laws by allowing an unstamped document to be read in evidence if the duty and penalty be paid. The case of giving secondary evidence of an unstamped document which has been lost or destroyed has not been provided for, and we recommend an extension of the recent enactment to that case.

Power of providing for a view in cases of change of venue.

The power of the Court in ordering a change of venue in cases where there should be a view is restrained by a want of power of ordering a view out of the county, or county of a city, where the action is to be tried. The Courts should, we think, have such a power as incident to the power of changing the venue.

Payment of money into Court.

The state of the law as to the payment of money into Court was brought under our notice by several members of the bar in Ireland in their answers to our inquiries. We find that this subject occupied the attention of the English Common Law Commissioners and is noticed by them in their second Report. We concur in the view expressed by them that a discretion should be left with the Court or a Judge to allow money to be paid into Court in cases where it is not now allowed. This would enable parties to protect themselves from trifling actions of tort where no question of character was involved, whilst the Court could prevent a defendant avoiding by a payment into Court the public vindication of the plaintiff's character.

Security for costs.

The power of requiring the plaintiff to give security for costs, if resident out of the jurisdiction of the Court, is sometimes used as a means of delaying plaintiffs. A check on this practice has been introduced in Ireland by the Irish Common Law Procedure Act, 1853, by section 52 of which a defendant applying for security for costs is required to make an affidavit of merits. We have already recommended that this check should be extended to the case of an Irish plaintiff suing in England. We are of opinion that the Court should be empowered to allow the security to be either by deposit or sureties, or by the plaintiff's bond or cognovit to enter judgment at the defendant's suit in one of the Superior Courts of the country where the plaintiff resides.

In actions by foreign plaintiffs the defendant is frequently a merchant sued for the acts or on the contract of his agents, and in some cases frivolous and harassing actions are brought, in which but small damages, if any, can be recovered, so that it would in many cases be unjust to require an affidavit of merits from the defendant. To obviate this a power ought, we think, to be given to the Court or a Judge, in actions by plaintiffs resident elsewhere than in England or Ireland, to determine whether on an application for security for costs an affidavit of merits should be required.

Attachment of debts under Garnishee sections of C.L.P. Acts.

The provisions of the Common Law Procedure Act, 1854, in relation to the attachment of debts, extended to Ireland by the Irish Common Law Procedure Act of 1855, have been amended in England by the Act of 1860, giving a certain amount of discretion to the Court in refusing to interfere.

A further amendment has been suggested by our experience of the working of these provisions. There are cases where parties have other adequate remedies, as for instance the appointment of receivers over rents in Ireland. There are also cases where the debts would in the usual course of trade or business be entitled to a certain period of credit. Again, where the debts to be attached are very numerous, and of a very small amount the remedy may be very oppressive. To preclude all doubt as to the discretion of the Court extending to such cases, we think it ought to be in terms enacted that the Court or a Judge may in their or his discretion refuse to interfere, and may impose such terms and conditions as to the time and mode of payment, or otherwise as shall seem fit.

Interpleader.

Some doubts having been suggested as to interpleader suits being subject to the same statutable provisions, as to inspection, discovery, appeal, and otherwise, in all respects

s ordinary actions, we recommend a declaratory enactment to remove such doubts and o place interpleader suits in the same position, in these respects, as ordinary actions.

The English Common Law Commissioners in their third Report, recommended that he different statutes giving a right to costs should be revised and consolidated. This vill be the more important as we are of opinion that the English and Irish law on this ubject should be assimilated, and we recommend that in carrying this out the law of osts should be simplified as much as can conveniently be effected.

Under this branch of our inquiry we have to submit to Your Majesty the following ecommendations:—

We are of opinion—

1. That a provision should be made to annul the writ in personal actions and in ejectment, unless the same be prosecuted with effect within a time to be fixed. — Writ not prosecuted, to be annulled.
2. That the 29th section of the 17 & 18 Vict. c. 125., as to paying duty at a trial on an unstamped document, and the analogous section of the Irish Common Law Procedure Act of 1856, should be amended, so as to enable parties to pay the duty and penalty when the unstamped document is lost or destroyed, and secondary evidence given of its contents.* — Evidence—unstamped documents.
3. That the Court or a Judge should be enabled, in making orders for changing the venue from one place to another, to provide for a view out of the county, or county of the city, in which the action is to be tried. — Power of providing for a view in cases of change of venue.
4. That, in addition to the cases where payment of money into Court is now permitted, the Court or a Judge should in all other cases be at liberty to permit it to be done, subject to such terms as the Court or a Judge may think right.† — Payment of money into Court.
5. That in actions brought in Ireland by persons resident in England, and actions brought in England by persons resident in Ireland, where security for costs is ordered, the Court should have power to order such security to be by bond, recognizance, warrant, or cognovit to enter judgment at the defendant's suit in one of the Superior Courts of the country where the plaintiff resides, or by deposit, or by sureties, as the Court shall think fit.‡ — Security for costs, English or Irish plaintiffs.
6. That in actions brought by persons resident elsewhere than in England or Ireland, it shall be in the discretion of the Court or Judge to determine whether, on an application for security for costs, an affidavit of merits shall be required. — Security for costs, Foreign plaintiffs.
7. That a provision to the following effect, viz., "In proceedings to obtain an attachment of debts under the Common Law Procedure Act, 1854, the Judge may in his discretion refuse to interfere or may impose such terms and conditions as to the time and mode of payment or otherwise, as he shall think fit," should be substituted for section 28 of the Common Law Procedure Act, 1860, and should be applied both to Ireland and to England. — Attachment of debts under garnishee sections of Common Law Procedure Acts.
8. That subject to the amendments herein-before recommended, the statutable provisions as to inspection, discovery, appeal, and otherwise, should apply to interpleader as well as to ordinary actions. — Interpleader—appeal, &c.
9. That the statutable provisions and rules of England and of Ireland, as to costs, should as far as possible be assimilated and simplified.§ — Costs.

x.—*Improvements of the Law of Ireland.*

There are some subjects with respect to which we recommend amendments in the law of Ireland where no corresponding change in the English law appears to us to be necessary.

Writs in Ireland are issued for the three Superior Courts from one Writ and Seal Office constituted in 1850. The Irish Common Law Procedure Act of 1853 provided the following form of testing writs of replevin,—"Witness the Seal of our Superior Courts "of Common Law." This has been found more convenient in practice than the form — Test of writs in Ireland.

* Suggestions, p. 144.
† Jellett and Holland's Statement, p. 8; Suggestions, p. 141.
‡ St., p. 5; Sug., p. 139. § St., p. 9; Sug., p. 146.

given in the same statute for writs in personal actions; and we accordingly recommend that it should be adopted in both replevin and personal actions.

Uniformity of practice in Superior Courts, Ireland.

Inconvenience has been experienced in Ireland from a want of uniformity of practice in the three Superior Courts of Common Law. This can best, we think, be obviated by having the practice settled in cases of difference by a meeting of the Judges, and a general order by any seven or more of the Judges, of whom two shall be Chief Judges, made as under the power of making general orders given by the Irish Common Law Procedure Act, 1853.

Number of jury before Master.

The Irish Common Law Procedure Act of 1853 introduced the principle of a jury of not less than three in trials of writs of inquiry before a Master. Cases of abuse have arisen from the small number of the jury. We recommend that writs of inquiry before the Master instead of the Sheriff should be retained in Ireland, but we think the jury should in all cases be of the full number of 12.

Before the Irish Common Law Procedure Act of 1853 the Courts in Ireland had the power of ordering writs of inquiry to be executed before a Judge in Dublin. This power should, we think, be restored, and the fullest discretion given to the Courts as to ordering writs of inquiry to be executed before a Judge at the consolidated Nisi Prius Court, or at the after sittings or on circuit.

Service of ejectment in Ireland.

Previous to the recent statute for the consolidation of the law of landlord and tenant in Ireland, 22 & 23 Vict. c. 154., the service of ejectments for non-payment of rent was regulated partly by statute 8 Geo. 1. c. 2. (Irish) sects. 4 and 5, and partly by the General Orders of the Superior Courts of Common Law in Ireland.

By the 8th of Geo. 1. cap. 2. it is provided that where any lease, for the avoiding of which an ejectment for non-payment of rent is brought, shall, before the bringing of such ejectment, have been mortgaged for a valuable consideration, the mortgagee and his assignees are to be served with the ejectment, as well as the lessee and his assignees, and proper affidavits of service are to be made and filed. The mortgagee is then to have nine months to pay arrears after execution executed.

Section 5 of the same statute limits the preceding section to mortgages and assignments registered within six months after perfection.

By the General Orders of the three Common Law Courts in Ireland, 1856, provision was made for securing the service of the proper parties, in cases of ejectment for non-payment of rent:—

Thus the Fourth General Order, 1856, provided as follows:—

"The 187th of the Rules and Orders made on the 11th day of January 1854 is hereby "abrogated, and in lieu thereof it is ordered, that in every affidavit of service of the "writ of summons and plaint in ejectment for non-payment of rent, it shall be stated "that the deponent knows not of, and does not believe that there is any person other "than those who have been served, who is tenant under the lease or instrument sought "to be evicted, or is in possession or receipt of the rents and profits of the premises "sought to be recovered, or of any part thereof; or who has any subsisting estate or "interest in such premises, or in any part thereof, or is entitled to the interest granted "to the original lessee or tenant by such lease or instrument, or to any part thereof; "or who is a mortgagee thereof—whose mortgage has been registered within six "calendar months from the perfection thereof; or who is assignee of any mortgage, "and whose assignment has been in like manner registered; and which statement shall "be verified by the affidavit of the attorney for the plaintiff, and by the person or one "of the persons by whom he was employed to bring the ejectment."

As to the mode of service, the provisions made by the 188th General Order of 1854 were left undisturbed:—

By that order it was provided "the writ of summons and plaint in ejectment may "be served personally on any party to be served therewith, wherever he may be found "within the jurisdiction; or, at his usual place of residence, wherever it may be within "the jurisdiction, on his servant, or on his wife, child, or other member of his family, "being an inmate of the house, and aged sixteen years and upwards; and in all cases "where such service shall not have been effected an application may be made to the "Court to substitute service, or have any service already made deemed good."

By the Landlord and Tenant Consolidation Act, 23 & 24 Vict. cap. 154., the preceding sections of the statute of Geo. 1. are repealed, and by section 55 it is provided "that "in any ejectment for non-payment of rent brought by any landlord under the Act, "it shall not be necessary to serve with the summons and plaint in ejectment, or with

" the Civil Bill process, any person other than the person or persons in actual possession " of the lands as tenant or under-tenant."

About one-thirteenth of the land in Ireland is held under leases for lives renewable for ever, or under the fee-farm grants into which such leases have, under the Renewable Leasehold Conversion Act, been converted.

There are, besides, valuable intermediate interests in perpetuity in the case of church lands and college lands, and valuable leases for long terms in towns. Many of such intermediate interests are of great value, and have been mortgaged and made the subject of settlement.

It has been represented to us* that the value of such intermediate interests has been seriously impaired by the provisions of the 55th section of the Landlord and Tenant Consolidation Act above referred to.

The previous state of the law, under the Act of Geo. I., and the General Orders of 1854 and 1856, afforded substantial security to purchasers and persons interested in mortgages or settlements of lessees' interests.

We are of opinion that the complaints of the insecurity under the recent statute of purchasers, mortgagees, and others having charges on lessees' interests are well founded, and we make recommendations accordingly to guard against this insecurity for the future.

The recommendations we have to make as to improvements in the law of Ireland in matters where we suggest no corresponding change in England are as follows :

We recommend accordingly—

1. That the form of testing writs of replevin, provided by the Common Law Procedure Act, Ireland, 1853, "Witness the seal of our Superior Courts of Common Law," be substituted in writs of summons and plaint in personal actions for the forms given in the same statute (Schedule B. No. 1). — Test of writs in Ireland.

2. That the practice in the three Superior Courts of Common Law in Ireland should be uniform ; and when differences shall appear to exist in the practice, the Lord Chief Justice of the Queen's Bench shall summon a meeting of the twelve Judges to take the subject into consideration, and determine by a General Order or Orders, to be made by any seven or more of the Judges, of whom two shall be Chief Judges, what the practice shall thenceforward be.† — Uniformity of practice. Superior Courts, Ireland.

3. That the Provisions of the Irish Common Law Procedure Act, 1853, sect. 98, fixing the number of jurors on inquiries before the Masters at not less than three, should be repealed, and that a full jury of twelve should be empannelled in every case.‡ — Number on jury before Master.

4. That in all cases of writs of inquiry in Ireland it shall be lawful for the Court or a Judge to order that they may be tried before a Judge at the Consolidated Nisi Prius Court, or at Nisi Prius, and (at his discretion) either at the after sittings or on circuit: and for that purpose to enter a suggestion on the Record whenever the trial is to take place out of the venue county. — Power of speeding writs of inquiry in Ireland before a Judge.

5. (1.) That protection should be afforded to registered mortgages and assignments of mortgages in Ireland, by requiring service of ejectments on mortgagees and their assignees, with nine months to redeem.§ — Service of Ejectment in Ireland. Registered Mortgages.

5. (2.) That other interests in land in Ireland should be protected by restoring the principle of the Fourth General Order of 1856, requiring an affidavit of service from one of the plaintiffs, and from the attorney bringing the ejectment, that they do not know or believe that there is any person, other than those who have been served, who is tenant, mortgagee, or assignee, under the lease or instrument sought to be evicted, or is in possession or receipt of the rents and profits of the premises sought to be recovered, or of any part thereof, or who has any subsisting estate or interest in such premises, or in any part thereof. — Protection of other interests as under 4th G. O. 1856.

5. (3.) And in the event of there being any difficulty in tracing the parties who ought to be served, that the Court should be empowered to make orders for substitution of service. — Substitution of Service.

xi.—*Crown Side of the Court of Queen's Bench in Ireland.*

Our attention has been called‖ to the state of the practice of the Crown side of the Court of Queen's Bench in Ireland.

We ascertained that there are no published rules regulating the practice on the Crown side of the Court of Queen's Bench in Ireland, and that the powers which the Judges of the Court of Queen's Bench in England have, under Statute 6 & 7 Vict. c. 20. s. 11, of

* Suggestions, p. 147. † Suggestions, p. 138. ‡ Jellett and Holland's Statement, p. 11.
§ Suggestions, p. 147. ‖ Appendix A., p. 152.

framing rules, do not exist in Ireland. It appears that there are other differences in the practice between the two countries arising from the reforms introduced by the above statute into England not having been extended to Ireland.

Assimilation of Crown practice in Ireland and in England.

We are of opinion,—

That the Court of Queen's Bench in Ireland should be provided with like powers, to those of the Court in England, and that the proceedings and practice adopted in England by the Crown side of the Court of Queen's Bench should be extended to Ireland.

xii.—*Office Copies of Documents.*

In connexion with the practice of the Crown side of the Court of Queen's Bench in Ireland, our attention has been called to a practice of requiring parties to take office copies of documents, though it would appear that the provisions of the Act 2 Will. 4. c. 48. were intended to relieve parties from such obligation, and we annex the answer which we received from the Clerk of the Crown in Ireland on this subject.*

It appears that the matter thus complained of is part of a more general question.

In some departments of the Courts of Law and Equity in England and Ireland a rule prevails that no person shall be compelled to take an office or attested copy of any affidavit or other document. This we think should be extended to all proceedings in all the Superior Courts of England and Ireland, both civil and criminal, and we accordingly recommend—

Extension of Rule against compelling parties to take office copies.

That the Rule which now prevails in some departments of the Courts of Law and Equity in England and Ireland, viz., that no person shall be compelled to take an office or attested copy of any affidavit or other document, should be extended to all proceedings in all the Superior Courts of England and Ireland, both civil and criminal.

II. — Constitution of the Superior Courts of Common Law in Ireland as to Number of Judges.

In close connexion with the subject of practice and procedure is the constitution of the Superior Courts of Common Law as to the number of the Judges.

In Ireland there are, as in England, three Superior Courts of Common Law,—the Courts of Queen's Bench, Common Pleas, and Exchequer.

This constitution has prevailed since the first introduction of English Law into Ireland in the reign of King John.

In Ireland there are four Judges in each of these Courts, and in England there are five. But only four of the five sit in the English Courts *in banco*, so that the constitution of the Courts when sitting *in banco* is the same in both countries.

The fifth Judge in each of the English Courts sits during term at Nisi Prius or at Chambers, so that there are in England six Common Law Courts in operation during term, three Courts *in banco*, and three for Nisi Prius or Chamber business.

In Ireland there are only four Courts, the three Courts *in banco*, and the Consolidated Nisi Prius Court.

The importance of the special constitution of the Courts *in banco* of four Judges, and neither more nor less, was made a matter of special observation by the Commissioners who inquired into the Courts of Common Law in England in 1829.

They show that the number of the Judges in the English Courts came to be established at the regular number of four Judges in each Court as early as the reign of King Henry VII., and it seems to have continued at the same number during the reigns of Henry VIII., Edward VI., Mary, and Elizabeth.

The Commissioners then notice that the only monarch subsequent to Henry VII. who broke in upon this constitution of the Courts *in banco* was King James I.

King James I. appointed a fifth Judge in each of the Courts of Kings Bench and Common Pleas, for the benefit, as he stated, of a casting voice in case of a difference of opinion.

The Commissioners of 1829, in considering the policy of this exceptional course of King James I. in appointing an odd instead of an even number of Judges, stated:—

"The soundness of the principle, however, upon which five Judges were appointed by King James has been greatly doubted by Paley. That accurate observer of human

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* Appendix A., p. 152.

affairs says in his chapter on the Administration of Justice:—'I should prefer an even 'to an odd number of Judges, and four to almost any other number; for, in this number, 'beside that it sufficiently consults the idea of separate responsibility, nothing can be 'decided but by a majority of three to one; and when we consider that every decision 'establishes a perpetual precedent, we should allow that it ought to proceed from an 'authority not less than this. If the Court be equally divided, nothing is done, things 'remain as they were, with some inconvenience, indeed, to the parties, but without the 'danger to the public of a hasty precedent.'"

The Commissioners then state:—"We entirely accede to this opinion; and, for this and "other reasons, we think that not more than four Judges should, at any time, sit together "*in banco*; and that one Puisne Judge in each Court to which five Judges shall be "appointed, should be exempted in rotation from attendance in Court during each "Term."

The Legislature adopted this recommendation of the Commissioners; and of the five Judges in each of the English Courts of Common Law, only four ever sit at one time *in banco*.

The Superior Courts of Common Law having been established in Ireland before the reign of King Henry VII., and consequently before the establishment of the fixed principle of having four Judges in each Court, this matter was not in the first instance attended to, and we find that there were in early times only three Judges in each of the Superior Courts in Ireland.

Sir William Petty, in his Political Anatomy of Ireland*, mentions all the officers and others serving in the Courts of Justice in the several provinces in Ireland in 1662. In that list he enumerates a Chief Justice and two Puisne Judges in each of the Courts of King's Bench, Common Pleas, and Exchequer, or nine Judges in all. But then he adds five other judicial officers which no longer exist, viz., the Chief Justice and Second Justice of the province of Munster, the Chief Justice and Second Justice of the province of Connaught, and the Chancellor of the Exchequer, who acted as a Judge, making fourteen in all.

That the Irish judicial system was, for many years, in a very inferior position to the English, is shown by the late period at which the independence of the Judges was secured.

In England the tenure of the Judges originally depended on the terms of their commission; and King James II. having abused the prerogative of the Crown to secure the subservience of the Judges, it was provided by the Act of Settlement, 12 & 13 Will. 3. c. 2., passed in 1700, that after the settlement of the Crown provided for by the Act should take effect, "Judges' commissions should be made *quam diu se bene* "*gesserint*, and their salaries ascertained and established."

The Act also provided that the constitutional mode of removing the Judges should be an address of both Houses of Parliament.

The Act of Settlement left the Judges still liable to be displaced at the end of each reign, as the succeeding monarch was not bound to appoint them. It also left their salaries inadequately secured. These defects were removed at the commencement of the reign of King George III. in 1761, by Statute 1 Geo. 3. c. 23., which provided that the commissions of the Judges should remain in force notwithstanding the demise of the Sovereign.

This Act also provided that the salaries of the Judges settled by Act of Parliament, and the salaries granted by the Crown, should be payable during the continuance of their commissions, and should after a demise of the Sovereign be charged upon the duties granted for the use of the civil government of the King.

In Ireland a practice appears to have prevailed in very early times of the Judges' commissions being sometimes for life. But in 1495, the power of the Crown to create independent Judges was taken away by an Act of the Irish Parliament (7 Henry VII. c. 2.).

This Act, after referring to some other officers, provided "That the Judges of the "King's Bench and Common Pleas, and the Chief and Secondary Baron of the "Exchequer should not have any authority in their offices but only at the King's "will and pleasure."

The Irish Judges continued to hold by this precarious tenure, long after the Judges in England were made virtually independent by the Act of Settlement, and had their independence made complete by the Act of 1761.

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* Edition 1691.

It was not until the Session of 1781–2, that these great securities for the administration of justice were extended to Ireland; when Statute 21 & 22 Geo. 3. c. 50. was passed by the Irish Parliament.

This important Statute, assimilating so far the position of the Irish and English Judges of the Superior Courts of Common Law, was followed in the succeeding year, 1783, by an unanimous address from the Irish House of Lords to the Crown for an increase in the number of Judges in order that the Courts might be carried on with dignity, efficiency and expedition.

A strong expression of opinion on the same subject was made about the same time by the Irish House of Commons.

In accordance with these expressions of opinion, an additional Judge was then added by the Crown to each of the Superior Courts of Common Law in Ireland, raising the number to four in each, thus completing the assimilation of the constitution of the judicial portions of these important tribunals to the model which has prevailed in England, with the single exception we have noticed, since the reign of King Henry VII.

This increase in the number of Judges enabled the circuit business to be more satisfactorily discharged in Ireland by the formation of the present number of six circuits, which took place in 1796.

In the same year the establishment of the County Court system of Ireland was completed, by the appointment, under 36 Geo. 3. c. 26., of Assistant Barristers in every county, not only to act as Chairmen of Quarter Sessions in criminal business, but to hold a separate Court with considerable civil jurisdiction.

The successful working of these local Courts was secured by a system of appeal more convenient to the suitor, and more suited to the circumstances of the country than the appeal under the English County Court system, being to the Judge of Assize at the next assizes instead of the English appeal to a Judge in London.

In connexion with this extensive appellate jurisdiction on circuit, which could only properly be exercised by a Judge of the Superior Courts, we may notice a difference between Ireland and England, that in Ireland Queen's Counsel are not named in the commission, except in the rare case where, owing to the illness of a Judge during circuit, it has become necessary to issue a commission of assistance.

From this historical sketch it appears that the existing arrangement of three Superior Courts of Common Law in Ireland has existed for upwards of 500 years, and dates from the introduction of English law into Ireland.

It also appears that the principle of having four Judges in each Court *in banco* has existed in England since the reign of King Henry VII., and is still the constitution of the English Courts, and has existed in Ireland ever since the extension to Ireland in 1782–3 of the English system of independent Judges and the English constitution of the Courts.

These facts of constitutional history explain the strong national feeling which exists in Ireland against a reduction in the number of the Judges of the Superior Courts of Common Law.

Such a reduction is not a mere question of saving of expense or of improved administration, but it is felt that it could not be effected without disturbing some essential part of the very constitution of the Superior Courts.

Thus, if one Judge were permanently withdrawn from any of the Courts, it would be impossible to have for important arguments *in banco* the constitutional number of four Judges; and, even for the ordinary business of the Court, all the inconvenience which in early periods of Irish history was experienced from having only three Judges would recur, as, should one be absent from illness, or employment, the Court would be reduced to two Judges.

The only reduction not open to these evils would be the abolition of an entire Court, but such a change would destroy the constitution of the Court of Exchequer Chamber, which is now identical with the similar tribunal in England; the appeals from each Court being heard before the Exchequer Chamber constituted of the Judges of other Superior Courts of Common Law. If there were only two instead of three Superior Courts, such a constitution of a Court of appeal would become impossible.

We have already noticed the importance of having a good local appellate jurisdiction in Ireland to guard against suitors being burdened with the expense of appeals to the House of Lords. And also to obviate the inconvenience of the House of Lords and the English Judges being occupied with appeals from Ireland upon any but the most important questions of law.

This reduction would, we think, be objectionable on other grounds. The judicial business which the Judges have to discharge is in Ireland, as in England, of a varied and responsible character.

During the four terms, the four Judges in each Court sit *in banco*. One of the Judges in each attends before the sitting of the Full Court to hear motions of course. The sittings of all the Puisne Judges *in banco* are not continuous, as one of them in turn sits during term for such time as may be required in the Consolidated Nisi Prius Court, for the trial of certain classes of records for all the Superior Courts. But this does not in practice prevent the Judge so engaged being present *in banco* for any special case.

After term the Lord Chief Justices and the Lord Chief Baron sit at Nisi Prius, and a Puisne Judge is frequently required to hold an additional Nisi Prius Court.

Out of term a Puisne Judge in rotation sits at the Consolidated Chamber Court.

Eight Judges usually, and not less than six, are required for the Court of Exchequer Chamber either in or out of term, and sittings *in banco* are sometimes required out of term.

Two of the Judges in rotation sit at the Commission Court for trying criminals in the County and City of Dublin, which is held six times in the year.

The Judges have to attend the Court of Criminal Appeal and the Court of Registry Appeal, for each of which not less than five Judges are required.

The Lord Chancellor occasionally requires the assistance of a Common Law Judge at the Chancery Appeal Court. The attendance of one or more Judges is also sometimes required at the Court of Delegates to try appeals from Admiralty cases.

The twelve Judges are required for the Assizes in the six circuits twice in each year. The circuit business, includes the appellate jurisdiction from the Irish County Courts which we have noticed, and also the hearing of traverses and objections to the presentments by Grand Juries, in the exercise of the very extensive powers of taxation for local purposes which Grand Juries possess in Ireland.

At present the business of suitors in the various Courts to which we have referred is disposed of by the Judges without any undue delay, and with proper deliberation.

It is true the Common Law Courts would be able, without any increase in their staff, to dispose of a larger amount of business than at present devolves upon them; but if the number of Courts were reduced to two, we do not think that the business in term and on circuit could then be so efficiently despatched.

It seems an unwise economy, when a system works well to reduce it to a condition which might render it difficult if not impracticable thereafter to have the business of the Courts satisfactorily performed.

The chief argument for a reduction of the number of Judges, is attempted to be founded upon a comparison of Ireland with England.

In this comparison, the effect of having in England a Fifth Judge of each Court, sitting not *in banco*, but at Nisi Prius or at Chambers during Term, and thus providing six Courts for the dispatch of business, is not sufficiently estimated.

Again, the practice of inserting Queen's Counsel in the Commission of gaol delivery that they may hold separate Courts for the trial of prisoners, the practice of Queen's Counsel sitting by consent to try Civil cases, and the numerous references which take place from want of time on circuit, are all methods of increasing the number of persons discharging judicial functions in England in matters falling within the jurisdiction of the English Courts of Common Law.

On one circuit in England, the pressure of business is so great, that suggestions have been made, and are under consideration for some means of providing a remedy. The state of the Nisi Prius lists in London, with numerous remanets for a considerable time, would seem to indicate that the pressure is not a question of circuit arrangement only, but that there is now too much work for the existing staff of English Judges to do, notwithstanding the increase that was made in their numbers in 1830.

If the judicial business of the Law Courts has been increasing in England, it may reasonably be expected to increase in Ireland, when we consider the great increase of wealth which has taken place there within the last 20 years, notwithstanding seasons of pressure, and the diminution of the population.

The changes of practice and procedure which we have recommended are considerable, and the immediate effect of such changes will be to throw additional labour on the Judges, in having the new system properly introduced and carried out.

Under these circumstances, having regard to the difficulties we have noticed in the way of any reduction short of a total change in the constitution of the Courts, we think it would be unwise to disturb a system which secures the efficient and expeditious discharge of the many and very important duties which are by the Constitution intrusted to the Judges of the Superior Courts of Common Law.

We are therefore of opinion,—

Number of Judges in Ireland.

That it is not expedient to reduce the number of the Judges in the Courts of Queen's Bench, Common Pleas, or Exchequer in Ireland.

III.—Equity Practice and Procedure.

1.—*Origin of Difference therein in England and Ireland. Question of Assimilation.*

We adopted, with respect to the diversity of practice and procedure in the Court of Chancery in England and the Court of Chancery in Ireland, a similar method of inquiry to that which we followed with respect to the Superior Courts of Common Law in the two countries.

We appointed two barristers, Mr. Chapman Barber of the English bar, and Mr. Jellett of the Irish bar, to draw up statements of the course of the Courts of Equity in England and Ireland, in such a manner as to point out the extent of the existing differences in the system as administered in the two countries, and we have annexed the statements to our Report.

In the preliminary observations to the statements there is the following passage:—

"On proceeding to draw up a concise statement of such parts of the practice and procedure of the Superior Courts of Equity as are peculiar to England, and of such parts as are peculiar to Ireland, we found that the practice and procedure of the two countries, originally similar, had by the effect of modern legislation become almost entirely different."

It thus appears that, the differences in Equity are of recent origin, and have been caused by separate attempts at carrying out Chancery reform in each of the two countries.

In England some of the chief measures of Chancery reform originated with the Report of the Commission which inquired into the practice of the Court of Chancery in England in 1825–26.

This Report was followed by the General Orders of 1828 and 1830, during the Chancellorship of Lord Lyndhurst. Under the Act of 3 & 4 Will. 4. c. 94., extending and confirming the power of the Lord Chancellor with the advice of the Master of the Rolls and Vice-Chancellor, or one of them, to make rules for regulating the practice of the Court, General Orders were made in 1833, 1841, and 1845, during the Chancellorships of Lord Brougham, Lord Cottenham, and Lord Lyndhurst respectively.

In Ireland there was no Commission of inquiry corresponding to the English Commission of 1825–26, but in 1834, by Statute 4 & 5 Will. 4. c. 78., a power of regulating the practice of the Irish Court of Chancery by General Orders (similar to the power given in England in the preceding year by 3 & 4 Will. 4. c. 94.) was conferred upon the Lord Chancellor of Ireland with the advice and assistance of the Master of the Rolls in Ireland.

Under this Statute and prior to the Irish Chancery Regulation Act of 1850, General Orders were made in 1834 and in 1843, during the Chancellorships of Lord Plunkett and Lord St. Leonards respectively.

The tendency of the General Orders of both Lord Plunkett and Lord St. Leonards was to introduce into Ireland reforms similar to those already introduced by the previous General Orders, above referred to, into England, so that the present diversity of Equity practice and procedure between England and Ireland did not exist to any great extent prior to 1850.

In that year the Irish Chancery Regulation Act was introduced without any previous commission of inquiry, and its provisions effected very extensive changes in the system theretofore existing in Ireland.

At the close of the year 1850 another Commission was appointed to inquire into the process, practice, and system of pleading of the Court of Chancery in England, and other matters relating to that Court. The Commission continued its inquiries until August 1854, and during its proceedings made three reports.

Upon these reports very important changes were introduced into the Court of Chancery in England, such as the abolition of the office of Master, and the making permanent provision for a third Vice-Chancellor, and for the appointment of Chief Clerks to the Master of the Rolls and Vice-Chancellors, in lieu of the Masters. 15 & 16 Vict. c. 80. s. 62.

Upon the reports of this Commission other important Statutes were founded, the provisions of which have not been extended to Ireland.

In November 1854 a Commission was issued to inquire into the Irish Incumbered Estates Court, and whether its powers should be transferred to the Court of Chancery; and by their Report the Commissioners recommended that the office of Master in Chancery in Ireland should be abolished, one Master, however, being retained for the management of the business of Receivers and for auditing certain public accounts under Statutes providing for that duty.

They also stated their opinion that it would be for the interest of the public and of the profession that the practice of the English and Irish Courts of Chancery should be assimilated as closely as circumstances would permit, so that the decisions of each might be applicable to both, and thus tend to establish a uniform system of equity in the two countries.

We have come to a unanimous resolution in favour of this assimilation.

We think it is of paramount importance to restore and preserve as far as possible a uniformity of system in the equity jurisprudence of the two countries.

ii.—*Inquiries in Ireland as to Irish System.—Details of Assimilation.*

With regard to this branch of our subject, we addressed a circular* accompanied by the Statements of Messrs. Barber and Jellett, to Irish barristers having considerable experience in Equity Practice and Procedure, and to the Councils of the several Societies of Attornies and Solicitors in Ireland, and we requested certain questions to be answered.

We at the same time forwarded a copy of the Circular and Statements to the Lord Chancellor, the Master of the Rolls, the Masters in Chancery, the Common Law Judges, the Judges of the Landed Estates Court, and to the Judges in Bankruptcy, Ireland, stating† that we should be glad to receive and pay every attention in our power to any observations it might occur to them to make in reference to the subject of the Statements and questions.

We have annexed the answers which we received to these circulars in Appendix B.; they are in favour of assimilation, and of the general superiority of the English system which we recommend.

They also contain some suggestions as to changes connected with assimilation, and as to Practice and Procedure proposed to be retained in Ireland. Some of these suggestions we approve of, and have made the subject of recommendations.

The procedure introduced into Ireland by the Chancery Regulation Act of 1850, of petition, answering affidavit, and affidavits by way of evidence without proper limits to the filing of such Affidavits, has not, in our opinion, worked satisfactorily. English practice generally preferable.

The references to Masters are attended with all the disadvantages which led to the abolition of the office of Master in England.

The jurisdiction under the fifteenth section of the Irish Chancery Regulation Act of 1850, has generally failed in the objects for which it was intended, and has not been attended with the advantages experienced under the English system, based upon the recommendations of the English Chancery Commissioners of 1850. There are, however, some portions of the Irish procedure which we recommend to be retained.

In the Chancery Reform introduced into Ireland by the Irish Chancery Regulation Act of 1850, Demurrers were entirely abolished. In England they are still retained. Demurrers.

Upon this subject the English Chancery Commissioners, in their first Report, state:—

"The Demurrer, when founded on substantial grounds, frequently determines the suit with great advantage to the parties, both as to expedition and expense. When founded on a technical objection, it is seldom attended with any result to the parties but additional costs and delay, for, if allowed on a technical objection, it is allowed with liberty to amend the Bill."

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* Suggestions, p. 157.

† Suggestions, p. 153.

The subject having been brought under our consideration by the diversity of practice in England and Ireland, we have come to the conclusion that a middle course should be adopted, and that demurrers should be allowed in both countries, but only for the substantial grounds of want of equity or multifariousness.

Return *non est inventus.*

With respect to enforcing decrees of the Court of Chancery in England, an impediment* is imposed by the necessity of issuing an attachment, and procuring a return of *non est inventus*, before a sequestration can be issued.

In Ireland a return of *non est inventus* is not required to obtain a sequestration, and it ought not to be required in England.

Assimilation.

On the general question of assimilation of Equity Practice and Procedure, and the changes connected with it, we are of opinion,—

English practice generally preferable.

1. That it is expedient that the system of practice and procedure of the Courts of Chancery of England and of Ireland should be assimilated as far as practicable.
2. That the practice and procedure of the Court of Chancery of England are generally to be preferred to the practice and procedure of the Court of Chancery of Ireland.

Demurrers.

3. That demurrers should be allowed for want of equity or for multifariousness only.

Abolition of Return *non est inventus.*

4. That the Irish rule of not requiring an attachment, and a return of *non est inventus* in order to obtain a sequestration should be extended to England.

Practice and Procedure in Equity peculiar to Ireland, proposed to be retained in Ireland.

Pleas.

In Ireland one of the reforms introduced by the Irish Chancery Regulation Act of 185 was the abolition of pleas.

This change has worked satisfactorily in Ireland, and we think that the English system of pleas should not be introduced into Ireland.

Irish practice as to suits.

In Ireland it has long been the practice in foreclosure suits that the decretal order should direct a sale, for the payment of the mortgage and all prior incumbrances, and an account for the purpose of such sale, as well as a foreclosure. The existence of the Landed Estates Court in Ireland renders this a very convenient and suitable practice, and should, we think, be retained, as also the practice of limiting the number of parties to a foreclosure suit.

Irish practice as to delivery of possession of land.

A practice has also prevailed in Ireland by which the delivery of the possession of lands pursuant to a decretal order is enforced by a writ of injunction to the Sheriff of the county in which the lands are situate. This has been found to work satisfactorily in Ireland, and should, we think, be retained.

Irish practice of service of notice through Notice Office.

The Irish practice, by which all notices in the Court of Chancery are served through the Notice Office, and the service proved by endorsement on the notice, has given satisfaction in Ireland. We do not think it should be changed for the English practice of proving notices by affidavit, but should be retained in Ireland.

The branches of Equity Practice and Procedure peculiar to Ireland which should, we think, be continued in Ireland are included in the following recommendations:—

We are of opinion—

Pleas.

1. That the system of pleas should not be introduced into Ireland.

Irish practice as to foreclosure suits to be retained.

2. That in consequence of the existence of the Landed Estates Court in Ireland the Irish practice as to decretal orders in foreclosure suits, directing a sale, and an account of all incumbrances affecting the premises, as well as a foreclosure, should be retained; and that the Irish practice limiting the number of parties to a foreclosure suit should also be retained.

Irish practice as to delivery of possession to be retained.

3. That the Irish practice should be retained by which the delivery of the possession of lands, pursuant to a decretal order, is enforced by a writ of injunction to the Sheriff of the county in which the lands are situate, which issues as of course upon a direction to that effect inserted in the decretal order.

Irish practice of service through Notice Office to be retained.

4. That the Irish practice, by which all notices in the Court of Chancery in Ireland are served through the Notice Office, and the service proved by endorsement on the notice, should be retained.

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* Barber and Jellett's Statement, p. 94.

.—Constitution and Fees of the Court of Chancery in Ireland.—Modifications consequent on Assimilation.

In England the office of Master in Chancery has been abolished, and the result of imilation would be a similar abolition in Ireland; and we are of opinion that the office Master in Chancery in Ireland should be abolished. Office of Master in Chancery.

In Ireland there are at present four Masters in Chancery; one has held office for years, two for 16 years, and only one has been recently appointed.

The Master who has been recently appointed holds the office of Receiver Master, and ore him the accounts of all receivers, sequestrators, and guardians of minors, appointed ce 1850 are passed.

The Receiver Master has also to discharge the statutable duties of auditing the counts of the Treasurers of Counties in Ireland, the accounts of the Commissioners Charitable Donations and Bequests in Ireland, and the accounts of the Collector neral of Rates of the City of Dublin. Receiver Master.

In connexion with the administration of the funds in the hands of the county treasurers, e Receiver Master has to sanction the amount of advances on estimates for the support gaols and other institutions, and also for the investment of county money in the rchase of Exchequer bills, and for the sale thereof as occasion may require.

When the office of Master in Chancery was abolished in England, the Chancery mmissioners recommended that some of the Masters' offices should be retained for a ited time in order to provide for the completion of the business pending under existing erences before the Masters.

This recommendation was adopted by the Legislature (15 & 16 Vict. c. 88.), and a ilar principle should, we think, be adopted in the case of the Masters in Chancery Ireland.

We recommend that no new appointment should be made, but that the existing sters, or some of them, should be retained so long as may be found necessary to pose of the business pending before them.

We have next to consider the number of Superior Judges which would be required in nsequence of the abolition of the office of Master. Vice Chancellor and Chief Clerks.

The Master of the Rolls in Ireland, in the paper which he submitted to us, indicates ly one objection to his undertaking the carrying out of the share of a new system of ancery practice, which would, under our recommendations, devolve on any new lder of that office. He objects to work out the arrears of business now in the office any of the Masters. Our recommendation, of following the English precedent of aining the Masters for this purpose, would obviate this objection.

We are of opinion that the Master of the Rolls, and one Vice-Chancellor, having each e chief clerk and two assistant clerks, would, in addition to the Lord Chancellor, and rd Justice of Appeal, under the new system, be sufficient to dispose of the equity siness in Ireland.

Power should, however, be reserved to the Lord-Chancellor, with the advice and nsent of the Master of the Rolls and Vice-Chancellor or one of them, by order under eir hands, to appoint an additional chief clerk and assistant clerks to the Master of e Rolls or Vice-Chancellor, or to both of them.

The change of practice in the Court of Chancery in Ireland, consequent on the option of our recommendation, would render a change necessary in the fees to be paid. Chancery Fees.
ne regulation of the same change in England was by the 15 & 16 Vict. c. 80. s. 38. rusted to the Lord-Chancellor in England with the advice and consent of the Master the Rolls and Vice-Chancellors, or any two of them, and we make a corresponding commendation for Ireland.

Our recommendations as to the changes in the constitution and fees of the Court of ancery of Ireland, rendered necessary by the adoption of assimilation, are as follows:

We are of opinion,—

1. That the office of Master in Chancery in Ireland, other than that of the Receiver Master, should be abolished. Masters in Chancery to be abolished.
2. That the existing Masters should be retained so long as it may be found necessary that they may, as far as practicable, complete the business pending before them. Masters to be gradually released from duties.
3. That, having regard to the special statutable duties now discharged by the Receiver Master, that office should be retained. Receiver master to be retained.
4. That the Master of the Rolls, with one Vice-Chancellor, having each one chief clerk and two assistant clerks, in addition to the Lord Chancellor and Lord Justice of Appeal, will be sufficient to dispose of the Equity business in Ireland. Number of Equity Judges.

Clerks to Equity Judges.

5. That it is desirable that power be given to the Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellor in Ireland, or one of them, by order under their hands, to appoint an additional chief clerk or assistant clerks to the Master of the Rolls and Vice-Chancellor, or either of them.

Power for Lord Chancellor, &c. to regulate fees.

6. That power should be given to the Lord Chancellor of Ireland, with the advice and consent of the Lord Justice of Appeal, Master of the Rolls, and the Vice-Chancellor in Ireland, or any two of them, to regulate the fees to be paid, so far as it shall be necessary to make any changes in the same in consequence of the alterations produced in Equity Practice and Procedure by carrying into effect the preceding recommendations.

V.—Subjects not immediately connected with Practice and Procedure or Constitution of Courts.

Having completed the consideration of the assimilation of practice and procedure in Common Law and Equity, the constitution of the Superior Courts of Common Law in Ireland as to the number of Judges, and the constitution of the Court of Chancery in Ireland so far as regards modifications consequent on assimilation, we have thought it desirable to make an immediate report.

We include in it some other distinct subjects, not of the same extent or importance, but with respect to which we have completed our inquiries.

i.—*Accounts in the Court of Chancery in Ireland—unclaimed Dividends.*

By the Act 16 & 17 Vict. c. 98. the Lord Chancellor of England has power of transferring to the Suitors' Fee Fund account, funds the dividends of which have not been dealt with for 15 years.

It appears from a return which we obtained from the Accountant General of the Court of Chancery in Ireland,* that in 1861 there were in that Court 810 accounts, the dividends or cash to the credit of which had not been dealt with for 15 years; and that there was standing to the credit of such accounts 74,632*l.* 4*s.* 5*d.*, cash, 627*l.* 5s. 3*d.* Government 3 per cent. consols; and 42,571*l.* 2*s.* 2*d.* Government new 3 per cents.

The Lord Chancellor of Ireland should, we think, have the same power as the Lord Chancellor of England has by statute over similar funds in England.

ii.—*Appointment of Commissioners to take Affidavits for the Court of Chancery, Ireland.*

Our attention has been called to† a defect in respect of the appointment of commissioners to administer oaths in Chancery proceedings,—the Act 55 Geo. 3. c. 157., which confers jurisdiction on the Court in Ireland, not making provision for appointment in certain places, *e.g.*, the Isle of Man and the Channel Islands. We are of opinion that the Court of Chancery in Ireland should have the same jurisdiction in this matter as the Court of Chancery in England has under Statute 15 & 16 Vict. c. 86. sect. 22., Statute 16 & 17 Vict. c. 78., and Statute 18 & 19 Vict. c. 42.

iii.—*Affidavit Office, Court of Chancery.*

Our attention has been called to the inconvenience which arises from the clerk of the affidavits in the Court of Chancery in Ireland, not having power to administer oaths and we recommend that such a power should be conferred upon him.

iv.—*Acknowledgments and Consents by Married Women.*

Our attention has been called to the inconvenience which exists with regard to the power of appointing commissioners for taking acknowledgments of deeds by married women in England in respect of property in Ireland under the Irish Act for the Abolition of Fines and Recoveries (4 & 5 Will. 4. c. 92.), it being necessary to make a new appointment in each case; and our attention has also been called to the like inconvenience of appointing special commissioners in each case to take the consent of married women to the payment out of the Court of Chancery of funds in which they are interested.

We recommend that the powers of the existing permanent commissioners in England and in Ireland for taking acknowledgments of married women, should be enlarged, and that they should be enabled to take consents as well as acknowledgments.

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* Appendix C., p. 187. † Appendix D., p. 187.

v.—*Substitution of Stamps for Fees.*

Irish Chancery Fund Stamps.

1 1824, by Statute 4 Geo. 4. c. 78., the fees payable to the Master in Chancery and he Chief Remembrancer of the Court of Exchequer in Ireland, were abolished, and a em of stamps, called Chancery Fund stamps, substituted for them.

1 1845, by Statute 8 & 9 Vict. c. 115., when the duty of taxing costs was transferred the Masters in Ordinary to the Taxing Masters, the stamps on certificates of tion of costs by the Masters were reimposed on the taxation by the new officers.

Irish Chancery Fees.

1 1824, by Statute 4 Geo. 4. c. 61., the Deputy Keeper of the Rolls in Ireland was ed on a salary, and his fees were required to be accounted for quarterly, and the lus paid to the Consolidated Fund.

1 1836, by Statute 6 & 7 Will. 4. c. 74., the Clerk of the Crown and Hanaper, the k of the Affidavits, the Clerk of the Appearances and Writs, and the Registrars of Court of Chancery in Ireland, were also placed on salaries, and it was provided that fees were to be accounted for quarterly, and the surplus, after deducting salaries, to the Suitors' Fee Fund.

1 1850, by the Irish Chancery Regulation Act, it was provided that the Lord Chanr's Secretary, and the Examiners of the Masters in Ireland, should be paid by salary ad of fees.

English Chancery Stamps.

1 1852 the Lord Chancellor of England was enabled, by Statute 15 & 16 Vict. c. 87., irect that fees should be collected by means of stamps; but no similar power was erred on the Lord Chancellor of Ireland.

he fees payable to the Lord Chancellor of Ireland under 4 Geo. 4. c. 61. are still d, but are accounted for to the Treasury, the Lord Chancellor receiving a fixed y.

like manner the fees belonging to the Office of Accountant General in Ireland r Statute 4 Geo. 4 c. 61. are not now received for his own use, but are under a sury Warrant accounted for.

veral subordinate officers of the Court of Chancery in Ireland still receive fees for own benefit.

his diversity of system should, we think, be put an end to by having the fees in Court of Chancery of Ireland collected by stamps as in England, and such of the ers of that Court as now receive fees for their own benefit should receive an valent income by salary out of the fund produced by the stamps.

Irish Law Fund Duties.

nder 7 & 8 Vict. c. 107. the fees in the Superior Courts of Common Law in nd are with a few exceptions taken by stamps, called Law Fund Duties. Two of Masters of the Common Law Courts in Ireland have agreed with the Lords Comoners of Her Majesty's Treasury to account for certain small fees which they ve, and accept a salary in lieu of them. The third Master still receives fees for wn benefit.

Fees of English Common Law Courts.

England, by Statute 15 & 16 Vict. c. 73., the Lords of the Treasury are owered with the approval of the Judges to prepare tables of fees to be taken e Superior Courts of Common Law in England. The system of collecting fees amps, which has worked satisfactorily in the Superior Courts of Common Law in nd, ought we think to be extended to the Common Law Courts of England.

e conclusions which we have formed on the several subjects included in the fifth of our Report are contained in the following recommendations:—

e are of opinion,—

Unclaimed Dividends.

1. That Sections 1, 2, and 3 of the Statute 16 & 17 Vict. c. 98. with reference to funds the dividends of which have not been dealt with for 15 years, should be extended, *mutatis mutandis*, to the Lord Chancellor and Court of Chancery in Ireland.

Taking affidavits for Court of Chancery, Ireland.

2. That the provisions with regard to the taking of affidavits for the Court of Chancery in England contained in Statute 15 & 16 Vict. c. 86. sect. 22., Statute 16 & 17 Vict. c. 78., and Statute 18 & 19 Vict. c. 42., should be extended, *mutatis mutandis*, to the Lord Chancellor and Court of Chancery in Ireland.

Clerk of affidavits to administer oaths.

3. That the Clerk of the affidavits of the Court of Chancery in Ireland should be empowered to administer oaths.

Facilities for taking acknowledgments and consents of married women.

4. That the perpetual Commissioners in Ireland for taking acknowledgments of deeds by married women should have power to take the acknowledgments of married women residing in Ireland relating to land situate in England, and *è converso*; and that the power of the perpetual Commissioners in Ireland should be extended to taking the consent of married women residing in Ireland

to the payment of money out of the Court of Chancery in England to their husbands, or otherwise, and *è converso*.

Stamps for fees:

5. That the fees of the Court of Chancery of Ireland should be collected by stamps; and that such officers of that Court as now receive fees for their own benefit, should receive an equivalent income by salary out of the fund produced by the stamps.

6. That the fees of the Superior Courts of Common Law in England should be collected by stamps.

We humbly submit this our First Report to Your Majesty's Royal consideration.

(Signed) JOHN ROMILLY. (L.S.)
FRANCIS BLACKBURNE. (L.S.)
JAMES H. MONAHAN. (L.S.)
A. BREWSTER. (L.S.)
*JOSEPH NAPIER. (L.S.)
W. P. WOOD. (L.S.)
JAS. S. WILLES. (L.S.)
HENRY GEORGE HUGHES. (L.S.)
WILLIAM ATHERTON. (L.S.)
THOMAS O'HAGAN. (L.S.)
ROUNDELL PALMER. (L.S.)
JAMES A. LAWSON. (L.S.)
H. M. CAIRNS. (L.S.)
GEORGE MARKHAM GIFFARD. (L.S.)
ROBT. B. FOLLETT. (L.S.)
RICHARD J. THEO. ORPEN. (L.S.)

Dated the 27th day of July 1863.

(Signed) W. Neilson Hancock,
H. R. Vaughan Johnson,
Secretaries.

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* Dissenting from so much of the Report as relates to the abolition of equitable defences in ejectment. See below.

Mr. Napier's Reasons for dissenting from the foregoing Recommendation as to the proposed abolition of the power of allowing equitable defences in ejectment.

I do not agree in this recommendation. I think it is a retrograde step that ought not to be taken. I prefer to go forward, and have better provision made for the beneficial exercise of the power, either by enlarging it sufficiently, or by enabling the Court of Law to certify the facts which constitute the equitable defence, and thereby to obtain the direct intervention of a Court of Equity, so as to render the equitable defence available at law. I do not think it is either reasonable or just, to allow a party to be defeated in a Court of Law, and to have judgment at law against him, if he has a good equitable defence, by means of which he could obtain the decree of a Court of Equity in his favour.

(Signed) JOSEPH NAPIER. (L.S.)

STATEMENTS OF DIFFERENCES IN PRACTICE AND PROCEDURE BETWEEN ENGLAND AND IRELAND.

I.—PRACTICE AND PROCEDURE OF COMMON LAW COURTS.

1. Joint Statement of Messrs. Jellett and Holland as to Parts peculiar to England and Parts peculiar to Ireland - - - - Page 1
2. Mr. Jellett's separate Statement as to Ireland - - - - - 33
3. Mr. Holland's separate Statement as to England - - - - 45

II.—PRACTICE AND PROCEDURE IN EQUITY.

1. Preliminary Statement by Messrs. Barber and Jellett - - - 56
2. Mr. Barber's separate Statement as to England - - - - 57
3. Mr. Jellett's separate Statement as to Ireland - - - - 75
4. Summary of Principal Differences - - - - - - 90

Joint Statement of Messrs. Jellett and Holland.

—1. Joint Statement by Messrs. Jellett and Holland of such Parts of the Practice and Procedure of the Superior Courts of Common Law as are peculiar to England, and of such as are peculiar to Ireland.

Forms of Actions.

In *England* Forms of Action are not specifically olished by the Common Law Procedure Act, 52, as was strongly recommended by the 1st port of the Common Law Commissioners, June 51, but that Act abolishes the technicalities pleading which rendered necessary a strict erence to the forms of expression peculiar to h action, and to the injury which it was in- ded to redress. It practically does away with ns of action in so far as any technical objection ld be made for not complying with them; and ay be said to have divided all personal causes ction into two classes, those on contract, and se for wrongs independent of contract. By t Statute also it is provided that no form of on need be mentioned in the writ (sect. 3); der of different causes of action is allowed; ial demurrers are abolished; and large powers mendment have been given.

ince that Statute, therefore, it may be said forms of action, by which we mean the liar technical mode of framing the writ and dings appropriate to the particular injury h the action is intended to redress, though not ifically abolished, are practically done away ; and a blunder in the form of remedy can- in any case affect the ultimate success of the e.

Ireland, by sections 5 and 6 of the I. C. L. P. 1853, special forms of personal actions are shed, and actions of assumpsit, account, covenant, trespass, trespass on the case, r, replevin, and detinue are resolved into general action, called a "*Personal Action.*" es of action of whatever kind, except eject- , may be joined, if between the same parties e same right.

th in *England* and *Ireland* this action retains ame, though the proceedings, as will here- be shown, have been much altered in both countries by the Common Law Procedure Acts, and in *Ireland* by the Landlord and Tenant Law Amendment Act, 1860.

Real actions.

In *England* and *Ireland*, by Statute 3 & 4 Will. 4. c. 27. s. 36., all real and mixed actions were reduced to a writ of right of dower; dower *unde nihil habet*; *quare impedit*, and ejectment.

But in *England*, as regards the first three actions and proceedings therein, a great change has been effected by the C. L. P. Act, 1860, sects. 26 and 27.

23 & 24 Vict. c. 126.

By sect. 26 no writ of right of dower, or writ of dower *unde nihil habet*, and no plaint for freebench or dower in the nature of any such writ, and no *quare impedit*, shall be brought in any Court, but where any such action or plaint would lie, either in a superior or in any other Court, an action may be commenced by writ of summons issuing out of the Court of Common Pleas in the same manner and form as the writ of summons in an ordinary action; and upon such writ shall be indorsed a notice that the plaintiff intends to declare in dower, or for freebench, or in *quare impedit*, as the case may be.

And by sect. 27 the service of the writ, appearance of the defendant, proceedings in default of appearance, pleadings, judgment, execution, and all other proceedings and costs upon such writ, shall be subject to the same rules and practice, as nearly as may be, as the proceedings in an ordinary action commenced by writ of summons; and the provisions of "The Common Law Procedure Act, 1852," and of "The Common Law Procedure Act, 1854" shall apply to the writ and pleadings, and proceedings thereupon.

They are, in fact, abolished as real actions; and the proceedings in them are the same as in any ordinary personal action. They must, however, be brought in the Common Pleas.

In *Ireland* the proceedings in these actions are conducted in the same manner as at Common Law.

Common Law.

Personal Actions.

As to Writ of Summons.

Joint Statement of Messrs. Jellett and Holland.

In both *England* and *Ireland* every personal action is commenced by writ of summons, or, as it is termed in Ireland, writ of summons and plaint. Before going into minor details of difference, it may be useful to point out one or two of striking points of difference.

Writ of Summons.

1st. In *England* writs may be issued out of any Court which the plaintiff chooses.

Rotation of writs.

In *Ireland* writs are issued in rotation by twenty-fives out of the several Courts. I. C. L. P. Act, 1853, sect. 15.

Service of writ.

2nd. An important difference exists in the mode of service, which leads to a distinction in the indorsements on the writs. This will be more fully explained hereafter when the mode of service is discussed.

Form of writ.

3rd. A great difference exists in the form and effect of the writ, which may be shortly stated as follows.

In *England* the proceeding is as follows:—Writ of summons calling on the defendant to appear; appearance of the defendant; declaration and pleas, and so on.

In *Ireland* the declaration is dispensed with; and the appearance, as distinguished from the defence, is abolished. The writ of summons and plaint contains a statement of the plaintiff's cause of action, and calls on the defendant to appear. The defendant appears and defends together (see forms Sched. B. of the I. C. L. P. Act, 1853, and in Schedule to this Statement).

We now proceed to point out in detail the differences between the writs.

Form of writ.

In *England* the writ of summons (of which the form is given in Schedule A. of the C. L. P. Act, 1852), simply calls on the *defendant to appear* within eight days after service [or, in case of writs for service out of the jurisdiction, within a time regulated by the distance of the place where the defendant is], in an action at the suit of A. B., or that in default A. B. may proceed to judgment and execution.

It need not mention the place of residence of the plaintiff, nor the character in which he sues or in which the defendant is sued, nor the venue.

In *Ireland* the *writ of summons and plaint* (of which a form is given in Schedule B., in the I. C. L. P. Act, 1853) answers to the writ of summons and to the declaration in England. It gives the place of residence of the plaintiff and defendant; it contains a true and succinct statement of the plaintiff's cause of action; and if the plaintiff sues or the defendant is sued otherwise than in his own right, it states the character in which, and the title by which, he sues, or in respect of which the defendant is sued, and the relief which the plaintiff requires, and the venue. The defendant is required to appear and answer the complaint within 12 days, or judgment.

The forms of the two writs and of the indorsements thereon will be found in the Schedule to this Statement.

Writ, how sued out.

In *England* a *præcipe* (which is a paper stating the county, the nature of the writ, the names of the parties and of the plaintiff's attorney, and the date,) is presented with the writ to the proper officer, who stamps it, and keeps the præcipe; and, as before said, it may be issued out of any Court.

In *Ireland* at the time of issuing the writ a docket is lodged with the officer, signed by the plaintiff's attorney (*see* form in Mr. Jellett's separate Statement). The Clerk of the Writs sets the common seal of the Superior Courts on the writ of summons and plaint, and enters the particulars in a book (sect. 8); and, as before stated, writs are issued by batches of 25 from each of the Courts in turn (sect. 15). Each writ is also stamped with a stamp indicating the particular Court to which it is appropriated.

In *England* the writ is tested in the name of the Lord Chief Justice or Lord Chief Baron, or in case of a vacancy, in the name of the senior Puisne Judge of the Court from which it issues (C. L. P. Act, 1852, sect. 5.)

In *Ireland* it is tested in the name of the Chief and other Judges of the Court in which it is returnable.

The regulations as to the date of the writ being the day of its issuing; as to the direction of the writ; as to its being indorsed with the name and place of abode of the attorney suing out the writ, are substantially the same in both countries. The only point to be noticed is that in *England* there is, by sect. 6, C. L. P. Act, 1852, a special provision to meet the case in which the attorney suing out the writ is not an attorney of the Court out of which it issues. There is no corresponding provision in *Ireland*.

The fact of the writ of summons and plaint in *Ireland* being equivalent to the writ and declaration in *England*, makes a considerable difference in the practice under this head.

In *England* (except in cases under sect. 25 of C. L. P. Act, 1852,) the only indorsement of the claim required is the one mentioned in sect. 8 of that Act, viz.: the amount of debt and costs, for the purpose of enabling the defendant to stay the proceedings by paying the amount mentioned within four days. Particulars of the plaintiff's demand are then given with the declaration, when it contains common counts, but not of any special count therein, unless specially ordered. The particulars do not form part of the record.

But by sect. 25, In all cases where the defendant resides within the jurisdiction of the Court, and the claim is for a debt or liquidated demand in money, with or without interest arising upon a contract, express or implied, the plaintiff shall be at liberty to make upon the writ of summons and copy thereof a special indorsement of the particulars of his claim, in the form contained in the Schedule (A.) to that Act marked No. 4. or to the like effect; and where a writ of summons has been indorsed in such special form, the indorsement shall be considered as particulars of demand, and no further or other particulars of demand need be delivered, unless ordered by the Court or a Judge.

This special indorsement is not compulsory on the plaintiff, and it does not dispense with the formal indorsement of the debt and costs above mentioned.

In *England*, moreover, in cases of liquidated demands, the indorsement states that if the defendant does not appear according to the exigency of the writ, the plaintiff may sign final judgment and proceed to execution at the expiration of eight days from the last day for appearance.

There are some other indorsements in certain cases which are peculiar to *England*.

1. Where the defendant, being a British subject, resides out of the jurisdiction, the time for appearance in the writ is regulated by the distance of the place where he resides, and there is an indorsement purporting that the writ is for service out of the jurisdiction. Sect. 18, C. L. P. Act, 1852.

2. Where an action of dower, or for free-bench, or for *quare impedit*, is commenced by writ of summons, a notice is indorsed on the writ that the plaintiff intends to declare in dower, or for free-bench, or in *quare impedit*, as the case may be.

In *Ireland* the only indorsements as to debt and costs are regulated by sect. 11 of I. C. L. P. Act, 1853, 8th G. O. 1854, and 1st G. O. January 1856. It will be seen that the indorsement of the particulars of demand, where it is a liquidated demand, is substantially the same as that given by sect. 25, and the form in Schedule A. of the English Act, with the addition that in *Ireland* the indorsement contains a notice stating a scale of costs according to which the action may be settled in six days from service. This indorsement in *Ireland* is, however, compulsory on the plaintiff; and the writ, or such counts in respect of which an indorsement shall not have been made, may be set aside as irregular. Lastly, there is a memorandum, that if the debt and costs be *paid* within six days after service, proceedings will be stayed, 7th G. O. 1854. All writs must contain an indorsement that service must be effected within six months from the date of the writ, and not afterwards.

In *England*, by sect. 9 of C. L. P. Act, 1852, concurrent writs may only be issued during six months from the issuing of the original writ, and they are in force only so long as the original writ is in force.

In *Ireland*, by sect. 14 of I. C. L. P. Act, 1853, no limit of time is fixed for obtaining duplicates, as they are called, but the prevailing impression is, that they must be obtained within six months from the issuing of the original writ.

The provisions as to renewing writs are substantially the same in *England* (C. L. P. Act, sects. 11 and 13) and *Ireland* (I. C. L. P. Act, 1853, sects. 28 and 30), except that in *Ireland* the effect of a renewed writ to save the statute of limitations depends upon the renewal being had by leave of the Court or a Judge, on an affidavit that reasonable diligence was used to effect service of it.

In *England*, when an infant sues, the writ is sued out in the name of the infant, though the *prochein amy* or guardian should be appointed by the Court before the writ is sued out. The *prochein amy* attends with the infant before a Judge, and a rule is drawn up, a copy of which is annexed to the declaration. If the *prochein amy* cannot attend personally, a petition is signed by the infant, praying to be admitted to prosecute by A. B., and at the foot is a consent signed by A.B. Upon this the rule will be granted. When an infant is sued, he can only appear by guardian, who is appointed in the same way as a guardian for an infant plaintiff. A lunatic sues and defends in the same manner as other persons.

In *Ireland*, by sect. 50, I. C. L. P. Act, 1853, in any case in which the plaintiff shall be a minor or lunatic, and before the filing of the summons and plaint as a pleading, a consent in writing, signed by some fit and proper person to act as next friend to such minor or lunatic, together with an affidavit to verify the signature of such person, shall be lodged in the office of the clerk of the rules, who shall thereupon enter a rule that such person shall be at liberty to sue as next friend for such minor or lunatic, and the name of such next friend shall be mentioned in the said summons and plaint as next friend to said minor or lunatic: Provided always, that the Court or a Judge shall and may alter or discharge such rule in case it shall seem necessary or proper.

And by sect. 51, in any case in which a defendant served with any summons and plaint shall be a minor or lunatic, the like proceeding shall be taken to appoint a guardian to defend for such minor or lunatic before filing any defence or demurrer; and the name of the person so appointed shall be mentioned in the defence as guardian to such minor or lunatic.

Service of writs.

The provisions as to *personal* service, where it can be effected, and as to the indorsement of service on the writ, and as to service on corporations, are substantially the same in both countries [see C. L. P. Act, 1852, sects. 14, 15, & 16 (England), and C. L. P. Act, 1853, sects. 31 & 33 (Ireland)], except that in *England* the indorsement of service must be made on the writ within three days at least after the service, while in *Ireland* such indorsement must be made on the day or day after the service; and that in *Ireland* in the case of service on corporations, inhabitants of counties, towns, or the like, notice has to be given in the newspapers of the issuing of the writ (sect. 33), which is not required in *England*. In *Ireland*, also, in the affidavit of personal service, the process server swears to acquaintance with the person of the defendant.

In *England*, in the case of a foreigner residing out of the jurisdiction, a *notice* of the writ (of which a form is given, No. 3 in C. L. P. Act, 1852, Schedule A.) is served instead of the writ itself (ib. sect. 19.).

Where personal service cannot be effected.

If personal service of the writ cannot be effected, the proceedings are somewhat different in the two countries.

In *England*.—1. Where the defendant resides within the jurisdiction, the proceedings are regulated by C. L. P. Act, 1852, sect. 17.

An order must be obtained from a Judge to *proceed as if personal service had been effected*, subject to such conditions as the Court or Judge think fit, upon an affidavit showing reasonable efforts to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service, and has not appeared thereto.

2. In the case of writs against British subjects or foreigners out of the jurisdiction, the Court or Judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction, and that the writ, or notice of the writ, was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the

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jurisdiction of the said Courts, in order to defeat and delay his creditors, may direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge may seem fit. C. L. P. Act, 1852, sects. 18 and 19.

In *Ireland* the proceedings are regulated by I. C. L. P. Act, 1853, sects. 32–35, and 99.

By sect. 32 service of any writ of summons and plaint on the defendant shall be effected either by delivery of a copy of such writ to the defendant in person, if it be reasonably practicable, and in other cases, and where it shall appear by the affidavit of service herein-after mentioned that such defendant is personally within the jurisdiction, and that due and reasonable diligence has been exercised in endeavouring to effect such personal service, and without effect, in such case it shall be sufficient to make service of such writ by leaving such copy at the defendant's house or place of residence, or at his office, warehouse, counting-house, shop, factory, or place of business, with the wife, child, father, mother, brother, or sister of the defendant, or with any servant or clerk of the defendant (the person with whom such copy shall be left being of the age of sixteen years or upwards), and showing to such person the original or duplicate original of such summons and plaint.

Substituted service.

And by sect. 34, in case it shall be made to appear by affidavit, to the satisfaction of the Court in which the action is attached, or, in vacation, of any Judge of any of the said Courts, that any defendant in any summons and plaint, the cause of action in respect of which the same shall have issued having arisen within the jurisdiction of the Court, has not been served with the writ of summons and plaint in the manner herein-before prescribed, and has not, according to the exigency thereof, appeared and taken defence to the action, and that due and proper means were used to serve such writ in the manner aforesaid, or that such defendant is out of the jurisdiction of the Court, and can be properly served through or upon any agent or representative, or any manager of the real or personal estate of such defendant within such jurisdiction, or has removed to avoid service, or on any other good and sufficient grounds, such Court or Judge may, upon an application made at any time while the said writ shall be in force, authorize such *substitution* of service through the post office, or in such manner and with such extension of time for service and defence as shall seem fit; and the taxing officer shall allow reasonable costs on such proceedings for substituting service or effecting such service as the Court shall have directed or deemed good; and in default of an appearance and defence by such defendant in due time it shall be lawful for the plaintiff to proceed thereon as is herein-after provided.

And by sect. 35 an affidavit of the service of the writ of summons and plaint in the manner herein-before prescribed, or in the manner directed by any such order for liberty to substitute service as aforesaid, shall be made and filed in the office of the pleadings assistant of the Court in which the action shall be depending, in case it shall become necessary to mark judgment by default.

And by sect. 99 the Master, before he permits judgment by default to be marked, must see that a proper affidavit of service has been filed, and that according to such affidavit, service has been effected in the manner prescribed by the Act, or substituted by order of the Court or a Judge as aforesaid.

The result of the above enactments in each country may be stated as follows:—

In *England*, if personal service cannot be effected, application must be made to the Court or a Judge upon affidavit; and the Court or Judge on being satisfied will grant a rule or order for *leave to proceed as if personal service had been effected;* and this applies equally where the defendant resides within or without the jurisdiction.

In *Ireland*.—1. Where the defendant is *personally resident within the jurisdiction*, and reasonable diligence has been used in endeavouring to effect personal service, service may be effected on a member of his family, &c., as above pointed out; and the officer of the Court will act upon an affidavit showing that the Statute has been complied with; and no application is necessary to the Court or Judge. But if service cannot be effected as above, the Court, on being satisfied by affidavit that the defendant is keeping out of the way to evade service, may order the *service to be effected* in such way as they think proper.

2. If the defendant is *resident out of the jurisdiction*, and has some agent or manager resident in Ireland, the Court may authorize *service to be substituted* on such agent. The order in this case is only a conditional order. (*See* Mr. Jellett's separate Statement, page 35.)

It may be mentioned here that in *England* by rules 165, 166, H. T. 1853, every attorney resident within 10 miles of the Post Office has to enter in a book kept by the Masters a place within three miles of the said office, where notices, pleadings, &c., may be served; and a party suing or defending in person must enter a like address. In default of such entries, pleadings, &c., may be stuck up in the Master's office without further service.

Appearance.

In *England* the appearance by the defendant is the next step in an action. It is a simple memorandum, and the proceeding is regulated by C. L. P. Act, 1852, sects. 29, 30, & 31, and R. 2, H. T., 1853. A defendant may appear at any time before judgment, though he is not in any better position as to time for pleading than if he had appeared in the proper time (ib. s. 29). If the defendant appears in person, he must give an address (ib. s. 30).

In case of non-appearance, *where the writ is specially indorsed*, final judgment may be signed *without a declaration* by the plaintiff, on filing an affidavit of personal service, or a Judge's order for leave to proceed, and a copy of the writ. On this judgment no error lies. C. L. P. Act, 1852, sect. 27. (See *Judgment by Default*, page 11.)

In case of non-appearance when the writ is *not specially indorsed*, the plaintiff may file an affidavit, as in the last case, and a copy of the writ, and a declaration indorsed with notice to plead in eight days; and may sign judgment at the expiration of the time to plead; and in the event of no plea being delivered, if the cause of action is for such a claim as might have been specially indorsed, judgment is final, and execution may issue for an amount not exceeding the amount indorsed on the

rit of summons, with interest at the rate specified, any, and the sum fixed by the Masters for costs, nless the plaintiff claim more, in which case the osts shall be taxed in the ordinary way; but the laintiff is not entitled to more costs than if he ad made such special indorsement, and signed udgment upon non-appearance (ib. sect. 28).

In *Ireland*, as there is no appearance distinct om the defence, there are no proceedings at this age corresponding to those in England. The time r filing an appearance and defence is 12 days om the date of the service of writ (See *Appearance and Defence*, page 7.) The proceedings in se of non-appearance and defence will be stated nder the head "*Declaration*," and "*Judgment by Default*."

In *England*, application to the Court to compel plaintiff to give security for costs cannot be ade till the defendant has appeared; and by . 22, H. T., 1853, such application must, in rdinary cases, be made before issue joined. Where the plaintiff resides out of the jurisdiction, he Court or Judge will compel the plaintiff to ive security for costs, though the defendant as no defence on the merits. No previous demand of security need be made of the plaintiff, hough it is usual to make it in all cases; and in rder to have the rule *nisi* drawn up with a stay f proceedings, a previous demand must be made f the plaintiff, otherwise the proceedings may go n pending the rule. The Court will not appoint ny fixed time within which security shall be iven; and the amount and sufficiency of the ecurity is to be decided by the Master.

In *Ireland*, by sect. 52, I. C. L. P. Act, 1853, ny defendant served with any writ of summons nd plaint in any action shall thereupon be deemed o be in Court for the purpose of making application o the Court or a Judge to compel the plaintiff to ive security for costs, and for other like purposes. Provided that no order for security for costs shall e made by reason of any plaintiff being resident ut of the jurisdiction of the Court, at the instance f any defendant, unless upon a satisfactory ffidavit that such defendant has a defence upon he merits.

And by 52, 53, & 54 General Orders, 1854, Where a defendant served with a summons and laint shall require security for costs from the laintiff, he may apply by notice to the plaintiff or such security; and in case the plaintiff shall ot, within 24 hours after service thereof, undertake by notice to comply therewith, the defendant may apply to the Court or a Judge or such security by motion on notice, grounded pon affidavit; and every such application shall e made *before* defence filed, unless the Court hall, under special circumstances, make it after efence filed.

Where a plaintiff shall have been ordered to ve security for costs, he may comply therewith, ther by entering into a recognizance by two curities in an amount to be measured by the fficer, or by lodging in the Court the amount so easured in lieu of such security; and a side-bar ule to lodge the amount may be entered as of ourse. If the plaintiff becomes entitled to be paid the money so lodged, the Master, on being tisfied by affidavit, may draw for such money in vour of the party or his attorney. Sect. 102, C. L. P. Act, 1856.

The service of any notice relative to the giving security for costs shall not operate as a stay of proceedings; but in case the party shall comply with the preliminary notice to give security for costs, or the Court or a Judge shall make an order for such security, the defendant shall have the same time for filing his defence after such security shall have been given as he had at the time of the service of such preliminary notice; the time allowed to be in no case less than 24 hours.

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Declaration.

In *England*.—If the defendant appears, the plaintiff declares. By sect. 58 a plaintiff must declare within one year after the writ is returnable, but within that year he may declare at any time, except between 10th August and 24th October, unless called upon, under sect. 53, by a notice from the defendant to declare within four days. This notice cannot be given till after the expiration of the term next after appearance.

In *Ireland*.—In case of non-appearance and defence the plaintiff, on filing an affidavit ascertaining the amount due, signs final judgment where the claim is for a debt or liquidated demand. (See *Judgment by Default*, page 11.)

In order to enforce an appearance and defence the plaintiff must file, within eight days from the service of the writ, in the office of the pleadings assistant, the original or a duplicate writ of summons and plaint, or a copy of it, certified by his attorney to be a correct copy; and if this be done, the time allowed to the defendant to file his appearance and defence to the writ is 12 clear days from the date of service, exclusive of holidays. If the writ of summons and plaint be not filed within eight days from the day of service, notice must be given to the defendant of the filing of the writ, and he is then allowed eight days from the service of this notice to file his appearance and defence.

If the writ of summons and plaint, or a duplicate or copy, be not filed within two months from the date of the service, unless the time for doing so has been extended by a special order of the Court, the defendant may, on an affidavit of the service of the writ of summons and plaint, and a certificate stating that it has not been filed, enter a rule that the plaintiff do file his writ of summons and plaint in four days, or pay to the defendant his costs occasioned by such service according to a scale fixed by the taxing masters, and this order has the effect of a judgment of *non pros.*

Comparison of declaration and plaint.

The forms of declaration and plaint given in the Schedules to the English and Irish Acts are almost verbatim the same.

Different causes of action.

Different causes of action by the same parties and in the same right may be joined in the same suit, but in *England* this does not extend to replevin and ejectment (C. L. P. Act, 1852, sect. 41). In *Ireland* the exception is confined to ejectment. (I. C. L. P. Act, 1853, sect. 54.)

Several counts on same cause of action.

In *England* several counts on the same cause of action are not allowed unless a Judge should think them proper for determining the real question in controversy between the parties. (Rules 1, 2, 3, T.T., 1853.)

In *Ireland* there is no rule to this effect, and in practice several counts or statements on the same cause of action are allowed.

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Action by husband and wife.

In the special case of husband and wife, a husband may add claims in his own right; but in *England* this can only be done in actions brought by a man and his wife for *an injury done to the wife* (C. L. P. Act, 1852, sect. 40), while in *Ireland* this may be done in any action brought by husband and wife for *any* cause of action accruing in respect of the wife, and in respect of which she is necessarily joined as a co-plaintiff. (I. C. L. P. Act, 1853, sect. 55.)

Venue.

In *England* the name of a county is stated in the margin of the declaration, and is taken to be the venue intended by the plaintiff. Venues are *local* or *transitory*. In actions in which the venue is *local*, the Court or a Judge may, on the application of either party, order the issue to be tried in any other county or place than that in which the venue is laid; and a suggestion to that effect is entered on the record. 3 & 4 W. 4. c. 42. sect. 22. In *transitory* actions no venue shall be changed without a special order of the Court or a Judge, unless by consent of the parties, R. 18, H.T., 1853.

In *Ireland* the venue in any personal action (which includes many cases where the venue would be *local* in England) may be laid in any county which the plaintiff thinks proper.

The rules as to changing the venue are in practice substantially the same [see R. 18, H.T., 1853 (England), and C. L. P. Act, 1853, sect. 62 (Ireland)]; for though in *England* there is some little difference of opinion as to when the common affidavit will be sufficient (see *Ramsden* v. *Skipp*, 13 C.B., 601; *De Rothschild* v. *Shilston*, 8 Exch., R. 503–506; *Jackson* v. *Kidd*, 29 Law Journ. C. P., 221); yet in practice some special grounds are almost always stated in an affidavit upon an application to change the venue. In *Ireland* special grounds must be stated, showing a preponderance of convenience in favour of the proposed venue.

In *Ireland* the application to change the venue cannot be made until after the defence is filed.

Misjoinder and Nonjoinder of Parties.

The provisions as to nonjoinder and misjoinder of plaintiffs and defendants, and amendments of such misjoinder and nonjoinder, are, except as to misjoinder of plaintiffs since the C. L. P. Act, 1860, substantially the same in England and Ireland.

In *England* they are regulated by sects. 34 -39, C. L. P. Act, 1852, and R. 6 H. T., 1853. In *Ireland* by sects. 84–91, I. C. L. P. Act, 1853.

Misjoinder of plaintiffs.

In *England*, however, by the C. L. P. Act, 1860, sect. 19, the joinder of too many plaintiffs shall not be fatal, but every action may be brought in the name of all the persons in whom the legal right may be supposed to exist; and judgment may be given in favour of the plaintiffs by whom the action is brought, or of one or more of them, or, in case of any question of misjoinder being raised, then in favour of such one or more of them as shall be adjudged by the Court to be entitled to recover: Provided that the defendant, though unsuccessful, shall be entitled to his costs occasioned by joining any person or persons in whose favour judgment is not given, unless otherwise ordered by the Court or a Judge. And by sects. 20 & 21 further provision is made to secure to the defendant his benefit of set-off, and to prevent any other action being brought against him by any person so joined as plaintiff.

In *Ireland* there are no corresponding provisions. A misjoinder of plaintiffs apparent upon the record appears still to be fatal in both countries. See *Bellingham* v. *Clark*, 1 B. & S. 332.

Also in *England* notice of misjoinder before trial is not provided for, and an amendment may be made at the trial of such misjoinder; but in *Ireland* misjoinder may be pointed out before the trial by notice; and a misjoinder will not be amended as a variance at the trial if such notice has been given.

In *England* the leave of the Court is not required for a plea in abatement of nonjoinder of defendants or plaintiffs; nor is any order to amend necessary; and nonjoinder of defendants can only be taken advantage of by plea in abatement.

In *Ireland* no plea in abatement for nonjoinder of plaintiffs or defendants shall be filed without leave of the Court (C. L. P. A. Act, 1853, sect 84), and the plaintiff may enter a side-bar order to amend (ib., sects. 87–89); and, further, notice of nonjoinder of defendants can be given (ib. sects. 88–89).

Pleadings subsequent to Summons and Plaint or Declaration.

In *England*, as before stated, the pleadings follow the declaration, and there is no limit to their extent.

In *Ireland* the appearance and defence are combined (I. C. L. P. Act, 1853, sect. 39), and by sect. 48 there shall be no further pleading after the defence, except a demurrer to the defence or a replication to a defence of set-off or plea of matter occurring subsequently to the commencement of the action, unless by the special leave of the Court or a Judge on an application to allow such further pleading, which shall only be allowed in case the real question or questions, whether of fact or law, between the parties cannot conveniently be raised and put in issue by the amendment of the previous pleadings.

In *England* the signature of counsel is not required to any pleading. C. L. P. Act, 185[illegible] sect. 85.

In *Ireland* every defence and subsequent pleading must be signed by counsel, 33 G. O., 185[illegible] and as to fees to counsel for settling, see 32 & G. O., 1854.

In *England*, where the defendant is within the jurisdiction of the Court, the time for pleading pleas in bar is eight days, unless extended by the Court or a Judge; and for pleading pleas in abatement, four days.

No rule to plead is necessary, and the notice to plead indorsed on the declaration or delivered separately is sufficient. C. L. P. Act, 1852, sect. [illegible] No plea (except a plea *puis darrein continuance*) pleaded at Nisi Prius, C. L. P. Act, 1852, sect. [illegible] shall be delivered between 10th August and 2[illegible] October, 2 W. 4. c. 39. s. 11; and see R. [illegible] H. T., 1853.

There are certain times for pleadings specified in particular cases, as after amendment of declaration, C. L. P. Act, 1852, sect. 90; and after particulars, R. 21, H. T., 1853.

There is no time limited for replying, rejoining, &c., but the party who has to plead may be called upon by notice to reply, rejoin, &c. within [illegible] days. This notice may be indorsed on the pleadings or delivered separately, sect. 53, C. L. P. A. 1852.

In *Ireland* the time allowed for filing appearance nd defence is 12 clear days from the date of ervice, provided the writ has been filed within ight days from such service. If the writ has ot been filed within the eight days, notice must e given to the defendant of the filing of the rit, and he is then allowed eight days from the ervice of that notice to file his appearance and efence. There is no distinction between the ime for filing defences in the nature of pleas of batement and other defences. A form of an ppearance and defence will be found in the chedule to this Statement.

No pleading shall be filed between 1st August nd 20th October.

The provisions for pleading after amendment of ummons and plaint are substantially the same as n England, I. C. L. P. Act, 1853, sect. 44; and fter particulars the time for pleading may be xtended by a Judge (see *ib.* sect. 46.) A defence y way of *puis darrein* may, as in England, be leaded at any time at Nisi Prius, *ib.* sect. 73.

In *Ireland,* by sect. 48, C. L. P. Act, 1853, o replication or subsequent pleading is allowed xcept a replication to a defence of set-off or plea f matter occurring subsequently to the commence- ent of the action, unless by the special leave of he Court or Judge on application to allow such rther pleading.

And by sect. 49 every replication and subse- uent pleading shall be pleaded, and notice of he filing, with a copy thereof, shall be served, nd the particulars of any payments relied upon hall be indorsed or annexed thereto in a similar anner to that prescribed in respect of the efence, so far as the same shall be applicable hereto.

There is no fixed time for replying, rejoining, c., but either party may move on notice that the pposite party do file his replication, rejoinder, c., or, in case of a defendant, the Judge who ives liberty to file such pleading may fix the ime for this purpose.

It may be stated generally with respect to the orms of pleadings in both countries, that plead- ngs which clearly and distinctly state facts ecessary to sustain the action or defence will be ufficient. No technical language is necessary— mmaterial statements have been abolished—and imple forms of pleadings (which, with the excep- ions herein-after pointed out, are verbatim the ame) are given in the Schedules to the Common aw Procedure Acts in both countries; special demurrers have been abolished, and upon issues oined on demurrers the Courts will proceed and give judgment according to the very right of the ause without regarding any imperfection, omis- ion, defect in, or lack of form. Pleadings framed o prejudice, embarrass, or delay will be amended y the Court or a Judge.

For these general observations, see C. L. P. Act, 1852, sects. 49–52 (England), and C. L. P. Act, 1853, sects. 53, 56, 61, 80, 81 (Ireland).

It may be mentioned here that in *England* very plea has to be written in a separate para- raph and numbered. In *Ireland*, each cause of ction in a summons and plaint, and each plea, hall be commenced in a new paragraph. 34 G. O. 854. By the same order special provisions are ade for the form of engrossment of pleadings, bstracts of issues, particulars, &c.

We will now proceed to point out the differ- ences that exist between the pleadings in the two countries.

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As to the general issue, the difference is, that in *Ireland* the general issue is abolished, and no plea is allowed that answers to the pleas in *England* of "never indebted" in action of contract, and "not guilty" in action of tort. The effect of the general issue in England is regulated by Rules 6, 15, 16, 19, 20, T.T., 1853. It is no longer a denial of the defendant's liability to the action generally, but is limited to a traverse of the most essential or characteristic allegation in the declaration, according to the particular form of the action, although in some cases it is not a traverse in terms of any express allegation. See *Bullen, Prec. of Pleading.* It is a denial of the gist of the action, and all matters in confession and avoidance must be specially pleaded.

General issue.

Again in *England,* by R. 21, T.T., 1853, a defendant is allowed by certain Acts of Parliament to plead the general issue, and give the special matter in evidence, but in *Ireland* this general issue by Statute is abolished, sect. 69, I. C. L. P. Act, 1853.

Traverses,

In *England* a defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration, although it might have been included in a general traverse.

A plaintiff may traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or, admitting some part or parts thereof, may deny all the rest, or any one or more allegations.

A defendant may in like manner deny the whole or part of a replication or subsequent pleading of the plaintiff.

There is no occasion to obtain the leave of the Court or a Judge to plead several pleas, when such pleas taken together afford but one answer to the declaration.

In *Ireland* the defendant is not permitted to traverse, as of course, more than one material allegation contained in the writ of summons and plaint, if such traverse constitutes in itself a ground of defence. If the defendant seeks to traverse more than one material allegation contained in the writ of summons and plaint, where each traverse in itself constitutes a complete defence to the action, the leave of the Court or a Judge must be obtained as in other cases of double defences.

Admission of facts by non-denial.

In *Ireland,* by sect. 68 of I. C. L. P. Act, 1853, all facts stated in any summons and plaint, and not denied in the defence, shall be deemed to be admitted for the purpose of the suit.

In *England,* a plea traversing an allegation in a declaration, although not for all purposes, nor in all events, an admission of the material allegations in the declaration which it does not traverse, yet may be considered as a *conditional* admission, that is, as admitting the allegation not traversed, *in case the plaintiff can prove the allegation traversed. Couling* v. *Coxe,* 8 C. B., 721; *Duke of Rutland* v. *Bagshaw,* 14 Q. B. 869; and provided the allegation not traversed is material.

It does not seem quite settled whether a fact admitted on the pleadings by implication is in every respect on the same footing as if it had been proved to a jury, or whether such fact must not be proved if an inference is to be drawn from

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it by the jury. See *Edmunds* v. *Groves*, 2 M. & W., 642, 643, per Alderson B.; and *Smith* v. *Martin*, 9 M. & W. 304; and *Robins* v. *Maidstone*, 4 Q. B. 815.

The provisions as to pleading the whole or part of a deed or other document, and the abolition of profert and oyer, are the same in both countries. C. L. P. Act, 1852, sects. 55 & 56 (E.), and I. C. L. P. Act, 1853, sect. 63 (I.).

In *England* an inspection of such deed or document would be granted (see *Penarth Harbour*, v. *Cardiff Waterworks*, 29 Law Journ. C. P., 230; and per *Lord Campbell* in *Child* v. *Roe*, 1 E. and B., 285); and in *Ireland* an inspection is provided for by I. C. L. P. Act, 1853, sect. 64.

By the last-mentioned section there is also a special provision that any deed or document relied on in pleading shall be produced upon every trial *and argument* in the cause, unless its non-production can be satisfactorily excused; and in default thereof it shall be lawful for the Court or Judge before whom such trial or argument shall be had to exclude the said party so in default from all benefit or advantage of the said deed or document, or to make such order for the postponement of the trial or argument, and the payment of the costs occasioned by the said postponement, as shall seem to be just.

There is no rule of this kind in England, but practically such a deed or document would have to be produced at the trial before a jury; and the Court or a Judge have power to postpone the trial of a cause, whenever they or he may think right, by sect. 19, C. L. P. Act, 1854.

Payment into Court. 1. England.

In *England* payment into Court may be made in all actions (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation or debauching of the plaintiff's daughter or servant), and, by leave of the Court or a Judge, one or more of several defendants may pay into Court a sum of money by way of compensation or amends, C. L. P. Act, 1852, sect. 70.

And it may be made, *by leave of the Court or a Judge*, in action on common money bonds and in detinue, in the former case to answer the claim of the plaintiff in respect of such bond, and in the latter case to the value of the goods alleged to be detained, C. L. P. Act, 1860, sect. 25; and again it may be made by a plaintiff in replevin in answer to an avowry. C. L. P. Act, 1860, sect. 23.

No rule or Judge's order to pay money into Court is necessary, except in the case of one or more of several defendants, and in actions on money bonds and in detinue (C. L. P. Act, 1852, sect. 72, and C. L. P. Act, 1860, sect. 25.), and in certain special cases.

The form of the plea is given in C. L. P. Act, 1852, sect. 71.

Mode of making the payment.

The money is paid to an officer of the Court, who gives a receipt for the amount in the margin of the plea; and it is paid out to the plaintiff or his attorney upon a written authority from the plaintiff on demand, C. L. P. Act, 1852, sect. 72; but no affidavit is necessary to verify such authority unless specially demanded, R. 11, H. T., 1853.

Proceedings by plaintiff after such plea.

The plaintiff, after the delivery of a plea of payment of money into Court, shall be at liberty to reply to the same by accepting the sum so paid into Court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and, in case of non-payment thereof within 48 hours, to sign judgment for his costs of suit so taxed, or the plaintiff may reply that the sum paid into Court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and, in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

The plaintiff, whether he accepts the money paid into Court in full satisfaction, or not, may immediately take the money out of Court, and he may do so whether he confesses or denies the plea of tender, when payment is made on such plea. If the plea of payment into Court is pleaded to part of the declaration, and the plaintiff determines to accept the same in satisfaction of the action, he must, with his replication of acceptance of the sum, add a *nolle prosequi* as to the residue of the declaration; and the defendant will be entitled to the costs of that part of the declaration and pleas to which the *nolle prosequi* is entered.

If the plaintiff accepts the sum in satisfaction only of the part to which it is pleaded, he must reply as to the other pleas; and he does not in such case tax his costs till the determination of the action; but he is entitled in any event to the costs in respect of the part of the claim so satisfied. R. 12, H. T., 1853.

In *Ireland* money may be paid into Court in discharge of the claim for debt or damages in all personal actions (with the same exceptions as those above stated in sect. 70 of the English Act), and in any proceeding by *scire facias* or writ of revivor to have execution on a judgment. In actions on money bonds in penalties for securing the payment of a lesser sum, or the performance of some collateral condition, no sum less than the penalty can be paid into Court; and in actions of detinue, claiming both a redelivery of some chattel and damage for its detention, it seems to be doubtful how far money can be paid into Court.

The mode of making the payment is by lodging the money in the Bank of *Ireland* on behalf of the defendant who shall make such lodgment, with the privity of the Master of the Court, and to the credit of the cause; and such Master, on the certificate of such lodgment being delivered to him, shall give a receipt for the amount in the margin of the defence. I. C. L. P. Act, 1853, sect. 75.

The proceedings by the plaintiff after payment into Court are defined by the following sections:—

By sect. 76. At any time before verdict or judgment for the defendant, or peremptory order for payment of costs for not proceeding to trial, the plaintiff may, in any case in which money has been lodged in Court in discharge of the plaintiff's demand, or on a defence of tender, apply to the Master of the Court to draw on the Bank of *Ireland* in favour of the plaintiff for the sum lodged by the defendant; and the said Master, on being satisfied by affidavit or otherwise that a verdict or judgment, or peremptory order for such payment as aforesaid, for the defendant has not been had, shall thereupon draw accordingly; but after verdict or judgment or peremptory order aforesaid for the defendant, the money shall remain in Court to answer the defendant's costs, and the

intiff shall not be at liberty to draw the same
ess by order of the Court on motion.

By sect. 77. In case the plaintiff shall accept
amount lodged in full satisfaction of his
aand, the receipt for the money given to the
ster shall state that it has been so accepted,
l the plaintiff's costs of suits shall be taxed and
ertained by the proper officer; and in case of
-payment thereof within 48 hours after
ation and demand the plaintiff shall be at
erty to enter a peremptory order for pay-
nt of his costs of suit so taxed, and for such
ther sum as shall be fixed by the taxing officer,
ject to the approval of the three chief Judges
the said Courts, as and for his costs of obtain-
such order.

And by sect. 78. In case the plaintiff declines
accept the sum paid into Court to satisfy the
im of the plaintiff in respect of the matter to
ich the plea is pleaded, the sufficiency of the
rment shall be tried upon the issue raised for
t purpose by the said defence, and in case of
h issue being found for the defendant the
endant shall be entitled to judgment and his
ts of suit.

It will be seen that the difference in practice is
y trifling, arising chiefly from the fact of there
ng no replication in *Ireland* to such plea.

Instead of a peremptory order for payment of
costs when taxed as in *Ireland*, the plaintiff in
gland may sign judgment for such costs.

In *England* the money paid into Court belongs
the plaintiff, whatever may be the result of the
ion.

In *Ireland* the money, if not drawn before
rdict or judgment, or peremptory order, is im-
nded to answer the defendant's costs.

In *England* debts accruing due after the com-
ncement of the action cannot be pleaded by
y of set-off.

In *Ireland* such debts may be pleaded in bar of
further maintenance of the action. C. L. P.
t, 1853, sect. 40.

In *England* pleas of payment and set-off, and
other pleadings capable of being construed
tributively, shall be taken distributively, and if
ue is taken thereon, and so much thereof as
ll be sufficient answer to part of the causes of
ion proved shall be found true by the jury, a
rdict shall pass for the defendant in respect of
nuch of the causes of action as shall be answered,
l for the plaintiff in respect of so much of the
ses of action as shall not be so answered. C.
P. Act, 1852, sect. 75.

In *Ireland* there is no such provision as to de-
ces of payment and set-off, and the portion of
plaintiff's demand to which they are pleaded
st be stated.

This power is given by sect. 80, C. L. P. Act,
52 (England), and sect. 59 of C. L. P. Act,
53 (Ireland).

The first difference is, that in *England* the right
plead and demur by leave of the Court or a
ge extends to all pleadings, but in *Ireland*
right does not appear to extend beyond the
ication.

A second difference is, that in *England* the affi-
must state that the plaintiff is advised and
eves that he has just ground to traverse, and
the matters sought to be pleaded by way of
fession and avoidance are true in substance
fact, as well as that the objections raised by
demurrer are good and valid, while in *Ireland* an affidavit to the latter effect only is required.

COMMON LAW.

In *England* no rule to plead several matters is necessary where a Judge's order has been obtained. C. L. P. Act, 1852, sect 82.

Joint Statement of Messrs. Jellett and Holland.

In *Ireland* a rule is necessary in all cases not falling within the 58th sect. I. C. L. P. Act, 1853.

Rule to plead several matters.

In *England* the pleadings are brought to an end by a joinder of issue. This joinder of issue serves as a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the plaintiff's pleading is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant. The issues of fact so joined are the issues for the jury to try.

Joinder of issue.

In *Ireland* there is no joinder of issue required. The issues of fact for the jury are settled by the parties, or a Judge in case of difference. Sect. 102, I. C. L. P. Act, 1853, as herein-after mentioned.

New assignment.

In *England* the practice as to new assignments is regulated by sects. 87 & 88 of the C. L. P. Act, 1852. One new assignment only is allowed to any number of pleas to the same cause of action; and no plea which has already been pleaded to the declaration shall be pleaded to such new assignment, except a plea in denial, unless by leave of the Court or Judge.

In *Ireland* such pleading, being in the nature of a replication, is not allowed without leave of the Court or a Judge; and the cases in which it is permitted are regulated by the discretion of the Court or Judge, to be exercised on the hearing of the motion for this purpose. In general a new assignment will not be allowed if the question at issue can be raised by an amendment of the previous pleading.

Demurrers.

In *England* the form of a demurrer is given, sect. 89, C. L. P. Act, 1852. A substantial matter of law intended to be argued is to be stated in the margin. The other grounds of demurrer intended to be insisted on are stated in "points of demurrer," which are given to the Judges four days before the day appointed for argument. R. 16, H. T., 1853.

And a joinder in demurrer is required. Sect. 89, C. L. P. Act, 1852, and R. 14. H. T., 1853.

In *Ireland* a form of demurrer is given in Schedule B. No. 3, to I. C. L. P. Act, 1853; and by sect. 80, it is provided that the legal points are to be stated *in* the demurrer; and no joinder in demurrer is necessary; but either party, after the demurrer books have been delivered to the Judges, may set down the case for argument.

The practice as to making up the *demurrer books* is somewhat different in England and Ireland.

In *England* it is regulated by Rules 15, 16, and 17, H. T., 1853.

In *Ireland* it is regulated by 50 & 51, G. O., 1854.

Judgment on demurrer.

In *England* judgment for the plaintiff on demurrer is final or interlocutory, in the same manner and in the same cases as a judgment by default. It is therefore final in actions where the plaintiff seeks to recover a *debt or liquidated demand in money*. *See* C. L. P. Act, 1852, s. 93.

In *Ireland* the words in sect. 82 of I. C. L. P. Act, 1853, are somewhat wider, "liquidated or money demand," but it is apprehended that reference must be made to sect. 96 of that Act, and that the law is the same in both countries.

COMMON LAW.

Joint Statement of Messrs. Jellett and Holland.

Special cases without pleadings.

1. Questions of *law.*

In England and Ireland questions of *law* may be stated in a special case without pleadings.

These proceedings are regulated in *England* by sects. 46–48, C. L. P. Act, 1852, and sect. 32, C. L. P. Act, 1854, and in *Ireland* by sects. 92–95, I. C. L. P. Act, 1853, and sect. 38, I. C. L. P. Act, 1856. And they are the same in both countries, except that in *Ireland* the agreement of the parties has to be filed in the Master's office within 10 days after the making thereof.

In *England*, in cases of interpleader proceedings, where the question is one of law, and the facts are not in dispute, a Judge may order a special case to be stated for the opinion of the Court. C. L. P. Act, 1860, sect. 15. There is no corresponding enactment in *Ireland*.

2. Questions of *fact.*

In *England*, moreover, questions of *fact* may, after writ issued and before judgment, by consent and leave of a Judge, be raised without pleadings in the form of an issue, which can be entered and tried as any issue joined in an ordinary action.

The proceedings are regulated by sects. 42–45, C. L. P. Act, 1852, and sect. 32, C. L. P. Act, 1854.

In *Ireland* no such proceeding can be taken.

Particulars of demand, set-off, &c.

1. In England.

In connexion with this head of pleadings we may refer to the practice as to particulars.

In *England*.—With every declaration (unless the writ has been specially indorsed under sect. 25, C. L. P. Act, 1852, when no further particulars need be given unless ordered) delivered or filed containing causes of action, such as those numbered 1 to 14 in Schedule B., or of a like nature, the plaintiff shall deliver or file full particulars of his demand under such claim, where such particulars can be comprised within three folios, or, if they cannot, then such a statement of his claim and of balance due as can be so comprised; and with every plea of set-off containing claims of a similar nature, particulars shall in like manner be delivered of the set-off; and copies of these particulars of demand and set-off have to be annexed by the plaintiff to the Nisi Prius Record, when entered. R. 19, H. T., 1853. If particulars are not so delivered, and are afterwards ordered by a Judge, no costs are allowed to the party so in default in respect of any summons to obtain a Judge's order to deliver particulars, or of the particulars delivered under such order. R. 19., and see R. 20, 21, H. T., 1853. Further and better particulars can be obtained by application to the Court or Judge, if thought desirable by such Court or Judge.

Particulars will sometimes be granted of special counts in a declaration (see Chit. Arch. 1357), and of a plea other than a plea of set-off. In actions of tort, it is generally the practice to refuse particulars, though they are occasionally granted, (see Chit. Arch. 1358,) and by R. 18, T. T., 1853, it is provided that in actions for trespass to land, the close or place in which, &c., must be designated in the declaration by name or abuttals or other description, in failure whereof the plaintiff may be ordered to amend with costs, or give such particulars as the Court or a Judge may think reasonable.

2. In *Ireland.*

In *Ireland*. By sect. 11, I. C. L. P. Act, 1853, the particulars of the plaintiff's demand, where the same shall be a liquidated or money demand, and of all credits to which the defendant may be entitled, and of the balance, if any, claimed by the plaintiff, shall be indorsed on the summons and plaint, and on the copies thereof for service, unles a detailed statement of the said particulars sha have been furnished to the defendant previously in which case it shall be sufficient to make refe ence to the statement so furnished, and to mentic the balance claimed to be due on foot thereof, unless the said demand shall consist of so man items or particulars that they cannot be indorse thereon, in which case the plaintiff shall cau particulars engrossed on parchment to be annexe to said summons and plaint, and copies there on parchment or paper to be annexed to t copies of such summons and plaint intended f service, to be incorporated therewith by prop reference, and shall cause the same to be serv on the defendant, together with the summons a plaint, and such indorsement or paper annex shall be considered as particulars of demand, a no further or other particulars need be deliver unless ordered by the Court or a Judge.

And by sect. 41, in case the defence sh insist upon any payment or set-off, the full p ticulars of the same shall be indorsed on the s defence and on the copies for service, unless th are so many that they cannot be convenien introduced therein, in which case they shall annexed thereto and incorporated therewith b proper reference.

And by sect. 46, the Court or a Judge m in any case, by an order made on motion, dir a further or more detailed particular of items of demand or credits referred to in summons and plaint, or of any payments or set referred to in any defence to be furnished; in any action for an injury to person or prope the Court or a Judge may order plans of place in which the injury is alleged to have b committed, or as to which any justification pleaded, to be given or exchanged between parties.

Copies of these particulars are to be anne to the Nisi Prius Abstract, 55 G. O., 1854.

Particulars will also be ordered on motion actions of tort, *e.g.*, in actions of trespass, or f nuisance, or for slander, if the Court be satis that such particulars are necessary to enable opposite party to plead.

The difference then between the practice that in *Ireland* it is compulsory to *indorse* p culars under sect. 11, whereas in *England* only optional for plaintiff to specially indorse writ under sect. 25; that in *Ireland* they unless too long, indorsed on the writ, and in porated with it by reference, and not, a *England* (except under sect. 25), delivered the declaration; that in *Ireland* the partic under sect. 11 must mention the credits which the plaintiff is entitled; but in *Eng* this is not necessary, though generally don avoid, if possible, a plea of payment or set-o respect of such credits. That in *Ireland* p culars of *payment*, if pleaded, have to be given not in *England*, nor would they, according t present practice, be granted even upon applic (Chit. Arch. 1369.) That in *Ireland* the pr as to ordering particulars in actions of wron persons and property is perhaps more liberal that in actions for an injury to persons or pro plans may be ordered to be given or exch between the parties.

Lastly, in *England*, by R. 21, H. T., 18 defendant has the same time for pleadin

e delivery of particulars under a Judge's order hich he had at the return of the summons, less the rule otherwise provides.

In *Ireland*, by sect. 46, I. C. L. P. Act, 1853, e extension of time is in the discretion of the idge.

Judgment by Default.

The proceeding as to final judgment where e plaintiff's *claim is for a debt or liquidated mand in money*, and where, in England, the rit has been specially indorsed, is substantially e same in both countries. In *England* it is gulated by C. L. P. Act, 1852, sects. 27 and 92, d R. 1 H. T. 1853. In *Ireland* it is regulated I. C. L. P. Act, 1853, sects. 96 and 99, and G. O., 1854.

The form of the affidavit differs slightly owing the Judge's order for leave to proceed in *Engnd* in case of personal service not being effected, ing in lieu of substituted service in *Ireland;* d in *Ireland* it is the duty of the Master, before permits judgment by default to be marked, to e that a proper affidavit of service has been ed, and that according to such affidavit service s been effected, either in the manner prescribed the Act or substituted by the Judge. An fidavit specifying the sum actually due must so be filed. 92 G. O., 1854.

As to the *costs*, for which judgment may be gned, in *England* they are regulated by R. 1 . T. 1853.

In *Ireland* they are regulated by G. O. 1st and d Feb. 1854.

In *England* execution cannot be issued on such dgment till the expiration of eight days from e last day for appearance.

In *Ireland* execution may be issued at once on the signing of the judgment.

In *England*, either before or after final judgent, the Court or Judge may let in the defennt to defend upon an application supported by satisfactory affidavit, disclosing a defence on e merits.

In *Ireland* a defendant may be let in to defend on such terms as the Court or Judge may ink proper, which, in practice, includes the king of a satisfactory affidavit of merits.

It may be here observed that in *England* where e plaintiff's claim is for a debt or liquidated mand, but the plaintiff has not chosen to inse the writ specially, the proceedings will be e same as above, except that he will have to file declaration, and then o sign judgment by fault at the expiration of the time to plead; d he will not be entitled to more costs than if he d specially indorsed the writ and signed judgent on non-appearance. C. L. P. Act, 1852, t. 28.

Where the amount of damage is *substantially matter of calculation*, a Master of the Court d inquire into the damages in both countries.

In *England* the proceeding is regulated by L.P. Act, 1852, sect. 94, and R. 171 H. T. 1853.

In *Ireland* the proceeding is regulated by C. L. P. Act, 1853, sects. 98, 99, and I. C. L. P. t, 1856, sect. 99.

In *England*, the direction of the Court or a dge that the amount shall be ascertained by a ster is necessary.

In *Ireland*, by the I. C. L. P. Act, 1856, such ection is not necessary, and the Master may oceed without any such direction.

In *England*, the Master has no power to try the case on affidavit or to hear any fact, which may be controverted on the reference, tried by a jury.

Common Law.

In *Ireland*, the Master may try the case on affidavit, and may, if any fact is controverted, sign a requisition to the sheriff of the county of the city of Dublin to summon jurymen, and the sheriff may send so many as he thinks fit, being not less than six, and a jury of not less than three shall be returned to try any such fact, and the Master makes his report on the verdict of such jury. I. C. L. P. Act, 1853, sect. 98.

Joint Statement of Messrs. Jellett and Holland.

When the damages cannot be ascertained by a Master, they must be assessed in *England* by a jury under a writ of inquiry, and they may be so in *Ireland*.

3. Where damages not matter of calculation.

But it is to be observed that in *Ireland* a much more extended power of inquiry is given to the Master than in *England*. By sect. 101 of I. C. L. P. Act, 1853, and sect. 99 of I. C. L. P. Act, 1856, where the Venue is in Dublin a Master may ascertain the amount of damages, though not a matter of calculation, without the direction of the Court or a Judge, instead of there being a writ of inquiry to the sheriff; and further when the Venue is *not* in Dublin, but elsewhere, the Master may, *by direction of the Court or a Judge*, ascertain the damages. In both cases the Master ascertains them by a jury of the county of the city of Dublin, six in number, in the same way as such damages would have been ascertained before a sheriff.

In Ireland may be assessed before Master.

In *England*, the proceedings are mainly regulated by 1 W. 4. c. 7. sect. 1, and the C. L. P. Act, 1852, and certain general rules. The writ of inquiry is a *judicial* writ.

Proceedings before a sheriff.

In *Ireland*, the proceedings before a sheriff are regulated by sect. 100, I. C. L. P. Act, 1853, and by 59—65 G. O., 1854. The differences in the proceedings under this head are as follows:

In *England*, the writ is left by the plaintiff at the sheriff's office two days at least before the day on which it is to be executed, if it is to be executed in the country, and one day at least before, if it is to be executed in London or Middlesex. The writ is returnable on any day certain in term or vacation, to be named in such writ.

1. As to the *writ*.

In *Ireland* there is no time fixed within which the writ must be lodged before the inquiry is sped. The time for the return of the writ is limited to three months from the day of issuing the writ, 59 G. O., 1854; but within that limit it may be made returnable on any day certain in term or vacation to be named in the writ.

In *England*, there does not seem to be any power in the sheriff to agree with the party delivering the writ to change the place of trial.

Place of trial.

In *Ireland*, such power is given by sect. 100, I. C. L. P. Act, 1853.

The time of giving notice of inquiry and countermand is the same in both countries, but in *England* countermand of notice of inquiry may be given in town or country,—R. 34, H.T., 1853.

2. *As to notice of inquiry.*

In *England*, notice of time and place of trial need not be given by the sheriff to the party delivering the writ. The plaintiff indorses on the writ a memorandum of the day on which it is to be executed.

In *Ireland*, ten days notice of time and place of trial must be given to the plaintiff by the sheriff. Sect. 100, I. C. L. P. Act, 1853.

Common Law. Joint Statement of Messrs. Jellett and Holland.

In *England*, there is the following special rule as to the giving notice of inquiry on the pleadings which does not exist in *Ireland*:—In all cases where the plaintiff's pleading is in denial of the pleading of the defendant, without joining issue, the plaintiff's attorney may give notice of trial as the time of delivering his replication or other subsequent pleading; and in case issue shall afterwards be joined, such notice shall be available; but if issue be not joined on such replication or other subsequent pleading, and the plaintiff shall sign judgment for want thereof, and forthwith give notice of executing a writ of inquiry, such notice shall operate from the time that notice of trial was given as aforesaid; and in all cases where the defendant demurs to the declaration, replication, or other subsequent pleading, the defendant's attorney shall be obliged to accept notice of executing a writ of inquiry on the back of the joinder in demurrer; and in case the defendant pleads a plea in bar or rejoinder, &c., to which the plaintiff demurs, the defendant's attorney shall be obliged to accept notice of executing a writ of inquiry on the back of such demurrer.—R. 40, H.T., 1853.

In *England*, notice of inquiry may be continued to any sitting in or after term on giving a notice of continuance four days before the time mentioned in the notice of inquiry; or two days if short notice of inquiry has been given, R. 36, H. T. 1853. This rule seems, in cases of inquiry, specially applicable to cases where the writ is to be executed before a Judge.

In *Ireland*, no such notice of continuance is provided for.

Special jury.

In England, this may be obtained by a Judge's order upon summons, if the case warrants it.

In *Ireland*, the plaintiff or defendant must apply to the Court by motion or notice, 62 G. O., 1854.

Judgment execution, &c.

In *England*, at the expiration of four days from the return of the inquiry, (R. 55, H. T. 1853) judgment may be signed, and execution may be issued after such signing.

In *Ireland*, judgment may be signed forthwith upon the return, sect. 100, I. C. L. P. Act, 1853.

In *England*, if the sheriff gives a certificate under 1 W. 4. c. 7. s. 1. (which corresponds with the certificate in Ireland under sect. 100, I. C. L. P. Act, 1853), judgment is postponed till the defendant has had time to move as in applications for new trial.

In *Ireland*, in such case the plaintiff may proceed as if no certificate was given, unless the defendant, within ten days after the speeding of the inquiry, serve notice of motion to set aside the inquisition. 63 G. O., 1854.

In *England*, if the sheriff refuse a certificate, the plaintiff may proceed to sign judgment after four days; but the defendant may within four days after the return day of the writ, or, as it seems, at any time before final judgment signed, move the Court to set aside the execution of it, or to arrest the judgment, or, if in vacation, apply to a Judge to stay the proceedings.

In *Ireland*, by 64 G. O., 1854, when the sheriff or other officer shall refuse to grant a certificate under the 100th sect. of the Common Law Procedure Amendment Act, Ireland, 1853, if the party whose application for such certificate shall be refused, shall thereupon give to the opposite party notice of his intention to apply to a Judge for an order under the said section, the opposite party shall not be at liberty to proceed under the said section until the expiration of six days after the day of the finding, but unless the party so expressing his intention shall within the said six days serve notice of such motion, specifying the grounds of the application, the opposite party may then proceed to judgment and execution as authorized by the said section.

Writ of Trial before Sheriff.

We may mention here that in *England* in any action depending in any of the Superior Courts for any *debt* or demand, in which the sum sought to be recovered *and* indorsed on the writ does not exceed 20*l.*, if the issue does not involve any difficult question, the Court or a Judge may order the case to be tried before the Sheriff of the county where the action is brought, or any Judge of any Court of Record for the recovery of debt in such county. 3 & 4 W. 4. c. 42. s. 17. (*See* Mr. Holland's separate Statement as to the proceedings, page 48.)

In *Ireland* there is no corresponding enactment.

Issues.

A very important difference is to be remarked here in the procedure of the two countries.

In *England*, the plaintiff makes up the *issue*. This is a transcript of the pleadings from beginning to end, the form of which is given in Schedule No. 1. to Rules of H. T. 1853. It concludes with an award of a jury, "Therefore let a jury come, &c." This issue is delivered by the plaintiff's to the defendant's attorney, and if there is any inaccuracy the defendant's attorney should at once get it amended.

The *nisi prius record* is then made up; this is a parchment document, and contains a transcript of the *issue*; to it are annexed the particulars of demand and set-off, and a printed copy of the panel of the jurors signed by the Sheriff.

The record is then complete, and the issues *raised by the Pleadings in it* are the issues which the jury have to try.

In *Ireland*, the proceedings are regulated by sect. 102, I. C. L. P. Act, 1853, and 74 & 75 G. O., 1854, and 2 G. O. 1856.

By sect. 102, after defence or last subsequent pleading filed, and together with the notice of trial, the plaintiff's attorney shall furnish to the defendant's attorney a draft of the abstract of the pleadings *and of the issues in fact* to be tried at nisi prius, according to the form No. 5. in the Schedule B. to the Act (see a form in the Schedule to this Statement); and in case the defendant shall not return the same, approved of, within four days from the delivery thereof, the plaintiff may take out a summons to settle the same before a Judge, who shall, subject to an appeal to the Court, settle the same, and shall have power to adjudicate on the costs of such settlement; and such abstract, so agreed upon or settled, shall be lodged with the pleadings assistant of the Court, and an engrossment of such abstract so agreed on or settled, and prepared by the plaintiff's attorney, shall be in place of the record of nisi prius, and the postea and all other proceedings at the trial shall be endorsed thereon and shall be returnable in the like manner as heretofore in respect of the nisi prius record.

And by 74th G. O., 1854, in case it shall become ecessary to settle the issues and abstract for isi prius before a Judge, the attorney for the arty requiring a summons shall lodge with the lerk of the rules of the Court a correct copy of he draft abstract of the pleadings and of the ssues proposed, as theretofore furnished, and the lerk of the rules shall thereupon issue a summons or such time and place as the Judge shall pprove.

And by the 2nd G. O., 1856, after defence or ast subsequent pleading filed, and before notice f trial, or together with notice of trial, the plain- iff's attorney shall furnish to the defendant's ttorney a draft of the abstract of the pleadings, *nd of the issues to be tried*, and in case the de- endant shall not return the same approved of ithin four days from the delivery thereof, the laintiff's attorney may take out a summons to ettle the same before a Judge, who shall pro- eed to settle the same in the same manner and ubject to the right of appeal prescribed by the 02nd sect. of the I. C. L. P. Act, 1853.

And by the 75th G. O. 1854, a short abstract f the pleadings must be lodged with the registrar f the Judge four days before the trial.

Under these orders and the statute, the plain- iff prepares the abstract for nisi prius, which con- ains a statement of the different pleadings in the ction, *and the issues which are settled upon them.* he abstract for nisi prius, when settled, is en- rossed on parchment, and serves as the record of isi prius. To it are annexed particulars of de- and, set-off, *and payment*, and also a copy of the ury panel.

Notice of Trial.

The only differences that need be remarked nder this head are as follows :—

In *England*, Notice of Trial may be continued o any sittings in or after term, on giving a notice f continuance four days before the time men- oned in the Notice of Trial, or two days in case *short* Notice of Trial. R. 36, H. T., 1853. his notice must be given in town.

In *Ireland*, no such provision exists.

In *England*, countermand of notice of trial may e given in the town or country. R. 34, H. T., 353.

In *Ireland*, there is no rule on this subject.

In *England*, by R. 40, H.T., 1853, a special rovision is made as to indorsing notice of trial n the joinder of issue, or in demurrer in the plead- gs. That rule will be found set out *ante*, under tle *judgment by default.*

In *Ireland* there is no corresponding provision.

Costs for not proceeding to Trial.

In *England*, there is no time limited within hich the rule for the costs of the day must be btained; and the rule is not a stay of pro- eedings. See R. 39, H. T., 1853.

In *Ireland*, by section 105 I. C. L. P. Act, 853, the rule must be drawn up within one onth after the day mentioned in the notice of al or inquiry; and such rule, so long as it re- ains in force, will be an answer to any applica- on in respect of any default in proceeding to al.

Default in not proceeding to Trial.

In *England*, by section 101, C. L. P. Act, 1852, where any issue is or shall be joined in any cause, and the plaintiff has neglected or shall neglect to bring such issue on to be tried, that is to say, in town causes where issue has been or shall be joined in, or in the vacation before, any term, for instance, Hilary term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried during or before the following term and vacation, for instance, Easter term and vacation, and in country causes where issue has been, or shall be joined in, or in the vacation before, Hilary or Trinity term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the second assizes following such term, or if issue has been or shall be joined in, or in the vacation before, Easter or Michaelmas term, then, if the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the first assizes after such term, whether the plaintiff shall in the meantime have given notice of trial or not, the defendant may give twenty days' notice to the plaintiff to bring the issue on to be tried at the sittings or assizes, as the case may be, next after the expiration of the notice; and if the plaintiff afterwards neglects to give notice of trial for such sittings or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, the defendant may suggest on the record that the plaintiff has failed to proceed to trial, although duly required so to do (which suggestion shall not be traversable, but only be subject to be set aside if untrue), and may sign judgment for his costs; provided that the Court or a Judge shall have power to extend the time for proceeding to trial, with or without terms; and by Rule 58, H. T., 1853, the provisions of this section are made applicable to writs of trial.

In *Ireland*, by section 106, C. L. P. Act, 1853, the plaintiff shall proceed to trial within three terms from that in which, or the vacation of which, the defence or other subsequent pleading is filed; and in default thereof the defendant may enter a rule that the plaintiff do proceed to trial at the assizes or sittings next after the expiration of twenty days from the service of such rule, and that in default the defendant shall be dismissed with his costs of the suit; and if the plaintiff neglects to proceed to trial in pursuance thereof, the defendant, on filing an affidavit of the service of such rule, and that the plaintiff has failed to proceed to trial in pursuance thereof, may enter a peremptory order for the payment of his costs of the suit, which order shall be in lieu and shall have the effect of a judgment as in case of a nonsuit; and the defendant on producing such order shall have the pleadings in the cause removed into the office of the master of the Court for the purpose of having execution thereon, and shall have execution accordingly; provided, however, that the Court or a Judge shall have power to extend the time for proceeding to trial with or without terms.

Trial by Proviso.

If the defendant wishes to have the case settled, he may, on the plaintiff's neglect to proceed, take down the cause for trial by proviso in both countries; and the proceedings are substantially the same.

Common Law.

Joint Statement of Messrs. Jellett and Holland.

In *England*, the defendant makes up the issues, and makes up and enters the Nisi Prius Record.

In *Ireland*, the defendant proceeds to have an abstract of issues settled, and enters such abstract.

In *England*, it is specially provided by R. 42, H. T., 1853, that no trial by proviso shall be allowed in the same term in which the default of the plaintiff has been made.

In *Ireland*, there is no corresponding rule.

Place of Trial.

Place of trial.

In *England*.—A cause may be tried, according as the venue is laid, in the *country* at the assizes, which are held in each county twice a year, and in some places three times a year, or in *London* or *Middlesex* at the sittings in or after term. Each Court has sittings in term, both in London and Middlesex, at which a puisne judge presides, and special juries are not, as a rule, taken at such sittings. At the after-term sittings, the Chief Justice of each court presides, or a puisne judge in his absence, and special and common juries are taken. The Courts are empowered to hold sittings for trial of issues of fact at any time or times in term or vacation, except between the 10th August and 24th October; and two Judges may sit at the same time for the trial of causes pending in the same Court.

In *Ireland*, a cause is tried in the county in which the venue is laid at the assizes which are held twice a year, and in cases in which the venue is laid elsewhere than in the county or city of Dublin, before one of the Judges of Assize. Causes in which the venue is laid in the county or city of Dublin, are either tried before the Chief Judge of the Court in which they arise at the sittings *after* each term, or *during* term in the *Court of Consolidated Nisi Prius*. This latter Court is constituted by a puisne Judge of one of the three Courts, who sits during each term to try causes of the nature hereafter described arising in *all* the Courts. The classes of causes which may be tried in the Court of Consolidated Nisi Prius are the following:—

Court of Consolidated Nisi Prius.

Actions for rent, actions on bills of exchange and promissory notes, actions of debt upon and to revive judgments, actions for use and occupation, goods sold and delivered, goods bargained and sold, work and labour, money lent, money paid, money had and received, and on account stated, ejectments for non-payment of rent, and against overholding tenants, whether on notice to quit or otherwise.

In the sittings after term a puisne Judge may hold sittings at Nisi Prius at the same time as the Chief Judge for the disposal of the causes set down for trial at the after-sittings in his own Court.

Juries and Jury Process.

The provisions under this head are substantially the same in both countries, the principal difference arising from the fact that in *England* the special juries in London and Middlesex are still struck according to the old fashion, and for a particular cause, not for all the special causes, as in the country and as in *Ireland*.

Common juries.

In *England*, a fresh precept has to be issued for the sittings after term.

In *Ireland*, the same precept does for the term and the after sittings.

The mode of summoning special juries for the assizes is the same in both countries.

In *Ireland*, special juries for Dublin county and city, are summoned in like way.

In *England*, special juries for London and Middlesex are nominated under section 110, C. L. P. Act, 1852, and a rule for a special jury is still necessary.

By sect. 110, in London and Middlesex special jurors shall be nominated and reduced by and before the Under Sheriff and Secondary respectively, in like manner as by the Master before the Act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose; and the names of the jurors so struck shall be placed upon a panel, which shall be delivered and annexed to the Nisi Prius Record, in like manner and upon the same terms as provided with reference to the panel of common jurors; and upon the trial the special jury shall be ballotted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors.

In *England*, except in London and Middlesex, a plaintiff in replevin and a defendant in other cases, to entitle himself to have a case tried by a special jury, must give notice to the opposite party of such intention within the time limited for obtaining a rule for a special jury in London and Middlesex, that is, more than six days before the commission day, sect. 109, C. L. P. Act, 1852; and by R. 44, H. T., 1853, no rule for a special jury shall be granted on behalf of any defendant, or plaintiff in replevin, except on an affidavit either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and in the latter case, no such rule is to be granted unless such application is made for it more than six days before that day, but a judge may order a special jury to be drawn up at any time.

In London and Middlesex the plaintiff obtains a rule for a special jury as a matter of course, but by rule 45, H. T., 1853, no cause shall be tried by a special jury in Middlesex or London unless the rule for such special jury be served, and the cause marked in the associate's book as a special jury cause on or before the day appointed for the trial of special juries.

In *Ireland*, by sect. 113, I. C. L. P. Act, 1853, the plaintiff in any action, except for the replevin of goods, shall be entitled to have the cause tried by a special jury upon giving notice in writing to the defendant at such time as would be necessary for a notice of trial of his intention that the cause shall be so tried, and the plaintiff in an action for the replevin of goods, and the defendant in other cases, shall be so entitled, on giving the like notice, within six days before the first day of the assizes or after sittings respectively; provided that the Court or a Judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit.

The power of the Court or a Judge to order that the cause be tried by a common jury in cases of delay, is in *England* confined to cases where the venue is in London or Middlesex. There is no corresponding limitation to Dublin.

The same notice has to be given to the Sheriff; and in case no such notice be given [*or the notice has not been given in sufficient time*, C. L. P. Act, 1853, sect. 115 (Ireland)], no special jury

be summoned or attend, and [*if by reason of a special jury is not summoned or does not*], C. L. P. Act, 1852, sect. 113 (England)], ause may be tried by a common jury in both ries.

ie same rules apply in both countries as to ffs keeping panels of special jurors for in- ion, the only difference being that in *England* ule does not apply to Sheriffs of London and lesex.

View.

ie proceedings are the same in both countries, ot as follows:—

England, by Rules 48 & 49, H.T., 1853, the for a view may in all cases be drawn up by fficer of the Court, on the application of the , without a motion for that purpose, and the ers are named by the parties without the vention of the Court.

Ireland, a motion on notice, grounded on ffidavit showing the necessity of a view, is ssary, and the viewers are named in the order e Court or Judge.

England, by Rule 49, H.T., 1853, upon any cation for a view, there shall be an affidavit, ng the place at which the view is to be made, the distance thereof from the office of the er Sheriff, and the sum to be deposited in the of the Under Sheriff shall be 10*l.* in case of a non jury, and 16*l.* in case of a special jury, if distance do not exceed 5 miles, and 15*l.* in of a common jury, and 21*l.* in case of a spe- jury, if it be above 5 miles. And if such sum be more than sufficient to pay the expenses e view, the surplus shall forthwith be returned he attorney of the party who obtained the ; and if such sum shall not be sufficient to such expenses, the deficiency shall forthwith aid by such attorney to the Under Sheriff. the Under Sheriff shall pay and account for money so deposited according to the scale ted in that rule.

Ireland, there is no corresponding rule.

Evidence.

he provisions as to admission, inspection, and very of documents are the same in both tries; and the only difference in the case nspection of documents is, that in *Ireland* otice in writing, demanding an inspection opy, or both, must be served on the oppo- party before application to a Judge. (Sect. . C. L. P. Act, 1853.) This notice is not ab- tely required in *England*, but should, in ge- l, be given. (Chit. Arch. 1350.) In *Ireland* notice operates to a certain extent as a stay roceedings (57th G. O., 1854).

his is regulated in *England* by sect. 58, L. P. Act, 1854; in *Ireland* by sect. 47, . L. P. Act, 1853. The wording of these sec- s is slightly different, but the effect is sub- tially the same. In *Ireland*, however, power nspect may be given not only to the party, his esses, and the jury, but also to the attorney agent of the party.

he only difference to be noted under this head hat in *England* the signature of counsel is not ired in the interrogatories or cross-interroga- es, nor need they be prepared by counsel, but *reland*, by 70th G. O., 1854, all interrogatories cross-interrogatories for the examination of esses shall be prepared and signed by counsel.

In *England*, by s. 64 of 20 & 21 Vict. c. 77, in any action at law or suit in equity, where according to the existing law it would be necessary to produce the original will in order to establish a devise or other testamentary disposition of *real estate*, the party intending to prove such devise or testamentary disposition, may give to the opposite party, *ten* days at least before the trial or other proceeding, notice of his intention to give in evidence as proof of such devise or disposition, the probate of the said will or the letters of administration with the will annexed, or a copy thereof *stamped with any seal of the Court of Probate*; and such probate, letters of administration, or stamped copy, shall be sufficient evidence of such will, *and of its validity* and contents, unless the party receiving such notice shall, within *four* days after such receipt, give notice *that he disputes the validity of such devise or other testamentary disposition.*

Common Law.

Joint Statement of Messrs. Jellett and Holland.

Probate or copy of will evidence in suits concerning real estate.

In *Ireland* by s. 68 of the Probates and Letters of Administration Act (Ireland), 1851, in any action at law or suit in equity, where according to the existing law it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise to give to the opposite party, *seven* days before the trial or other proceeding, notice that he intends at the trial or other proceeding to give in evidence as proof of the devise the probate of the said will or letters of administration with the will annexed or a copy thereof, stamped with the seal of the Court of Probate, and in every such case such probate or letters of administration or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, unless the party receiving such notice shall, within *three* days thereafter, give notice that he disputes the validity of such devise.

The words in italics sufficiently show the differences. There is, however, in *Ireland* a further provision, that in case any such counter notice is served, the Court or a Judge may, upon application of the party intending to produce such probate, letters of administration, or copy, make such order in relation thereto, and impose such terms as may be fit.—s. 32, I. C. L. P. Act, 1856.

In both countries in every case in which the original will after such counter notice is produced and proved, the Court or Judge, before whom the evidence is given, may direct by which of the parties the costs shall be paid. (*a*)

In *England*, four names may be inserted in one subpœna (Chit. 319); in *Ireland*, any number of names may be inserted. (71. G. O.)

Proceedings at the Trial.

The order of speeches of counsel; the power of a Judge, when issues of fact are left to him, to direct arbitration; the power to adjourn; affirmation instead of oath; the regulations as to discrediting a witness; proving contradictory statements, and prior convictions; calling attesting witness; stamping documents; ruling as to sufficiency of stamps, &c., are the same in both countries.

Common Law.

Joint Statement of Messrs. Jellett and Holland.

Bill of Exceptions.

In *England*.—A Bill of Exceptions, or rather the substance of it, is tendered to the Judge at the trial and before verdict. The bill is then formally framed and settled by counsel, and settled by the Judge if counsel cannot agree. The Judge is bound to sign and affix his *seal* to the document. If the bill be not tacked to the record, the whole record must be set out in it, but if so tacked, it then merely states the proceedings after issue joined and the exceptions. The only mode of taking advantage of it is by bringing *error*, and having the matter determined by a Court of Error, for the Court, in which the action was brought, gives judgment, as if the bill did not exist.

There is no fixed time for furnishing a draft of the bill of exceptions to the opposite party, though no delay would be allowed.

In *Ireland*.—The form of and proceedings upon bills of exceptions are regulated by the Irish Statute 28 G. 3, cap. 31, sect. 1, and I. C. L. P. Act, 1853, sect. 121, and the General Orders 84, 85, and 86. By the first Statute, after reciting that it has been holden that bills of exception taken to the opinion of a Judge at Nisi Prius are not examinable in the Court in which the action is brought, and can only be examined on a writ of error brought in a superior Court, whereby the party offering such bill is subject to great delay, it was enacted that it shall be sufficient if the Judge, to whom such bill of exceptions shall be tendered, sign the same, and it shall not be necessary for him to put his seal thereto; and such bill of exceptions, so signed, shall remain with the clerk of Nisi Prius, and be incorporated into the postea, and be returned therewith to the Court in which the action is brought, which Court shall have authority to examine the same and give judgment thereon, or make such order either by arresting the judgment, granting a *venire facias de novo*, or otherwise, as shall be agreeable to justice.

And by the general orders it is provided that when any party shall have taken exceptions at a trial, he shall, ten days before the next succeeding term, if the trial shall have been had at the assizes, or if in the sittings after term, or two days after the trial, if in term, or in the sittings after Easter term, furnish a draft of the bill of exceptions to the opposite party, with a notice calling upon him to return the same settled in four days. On the expiration of four days from the furnishing of such draft, whether it shall be returned or not, the party excepting shall issue a summons to settle the same before the Judge who tried the cause; whereupon the same shall be settled and signed by such Judge, and within two days thereafter the party excepting, shall file the same, and make up paper books, and set down the case for argument as in the case of a demurrer. Such paper books shall contain the abstract for Nisi Prius and bill of exceptions, with the names of the counsel and attornies on both sides, and shall be made out as the paper books in demurrers.

The mode of taking a bill of exceptions at the trial, is the same as in England. The difference then in the practice between the two countries appears to be as follows:—

In *England*, the bill of exceptions is *sealed*, as well as signed by the Judge.

In *Ireland*, it is signed only.

In *England*, the bill of exceptions is no part of the record until brought into the Court of Error, and is therefore examinable only in that Court, and judgment can only be given on the exceptions.

In *Ireland*, the bill of exceptions is part of the postea itself, and is entered as such on the plea roll, and is therefore examinable by the Court in which the action is brought; and the Court may give judgment on the whole record, and if the writ of summons and plaint be defective, arrest the judgment. Proceedings to error can be taken on the judgment of that Court, as in other cases.

In *England*, no specific time is limited within which the draft of the bill of exceptions must be tendered to the opposite party, or within which the bill must be settled.

In *Ireland*, a fixed time is limited for both purposes.

Motions for New Trial, Arrest of Judgment, &c.

The time for moving appears to be the same in both countries, R. 50, H. T., 1853 (England), and 88th G.O., 1854 (Ireland).

But in *England*, when a cause is tried in term, no motion can be made in any case *after the expiration of that term*, R. 50.

In *Ireland*, if the four days after the trial have not run out before the expiration of the term, the motion may be made in the ensuing term, but within four sitting days from the trial.

In *England*, no notice need be given to the opposite party of the motion, unless the motion is entered in the list of postponed motions, or be postponed by leave of the Court or a Judge in the case of a cause tried in term, when such notice has to be given, R. 53, H. T., 1853.

In *Ireland*, no notice of the motion need be given in any case.

In *England*, no certificate of counsel is required in any case.

In *Ireland*, in all cases except those in which an affidavit is required (*e.g.*, motions on the ground of surprise, fatality, or discovery of new evidence), the application must be supported by the certificate of the leading counsel at the trial, containing a short abstract of the proceedings at the trial, and the grounds on which, in his opinion, the application should be rested.

Motions to arrest Judgment, or for Judgment non obstante veredicto.

The enactments in both countries are precisely the same, except that in *Ireland*, it is specially provided that "the party insisting on the objection "must satisfy the Court that there has been an "omission of some substantial matter of fact "whereby he may have been prejudiced in the "merits of his case." (See sect. 163, I. C. L. P. Act, 1853.)

In *Ireland*, a judgment shall not be arrested, stayed, or reversed by reason that the plaintiff or defendant being under 21 years, did sue or defend by attorney. (I. C. L. P. Act, 1853, sect. 122.)

In *England*, if an infant sue by an attorney, this cannot be assigned as error, yet the defendant may plead it in abatement, or perhaps proceedings might be stayed till a *prochein amy*, or guardian be appointed. (Chit. Arch. 1166.)

If an infant be sued by attorney, and appear by attorney, and judgment be given against him

ıay be reversed on error, but not when a judg-
ıt is given for him. (Chit. Arch. 1170.)
a very recent case the Court made a rule
olute, after judgment given for the plaintiff, to
aside the proceedings subsequent to appear-
e, the defendant to appear by guardian within
days. (*Carr* v. *Cooper*, E. B. & S. 230.)

Judgment.

n *England*, by sect. 206, C. L. P. Act, 1852
ended by R. 70, H. T., 1853), it shall not be
essary, before issuing execution upon any
gment whatever, to enter the proceedings upon
roll, but an *incipitur* thereof may be made
n paper, shortly describing the nature of the
gment according to the practice heretofore
l, and judgment may thereupon be signed, and
s taxed, and execution issued, according to
practice heretofore used; but the proceedings
be entered upon the roll whenever the same
become necessary for the purpose of evi-
ce, or of bringing error, or the like.
n *Ireland*, by sect. 123, I. C. L. P. Act, 1853,
ıall not be necessary, before issuing execution
n any judgment under the authority of this
, to enter the proceedings upon any roll, but
oducing, and lodging with the proper officer,
rtificate of the name, description, and address
he parties, an entry shall be made in the judg-
t book, signed by the master, shortly stating
nature of the judgment, and thereupon the
s shall be taxed, and execution issued, accord-
to the practice heretofore used, and the effect
very such entry of a judgment shall be the
e as that of a judgment in an action in the
n heretofore used; and such entry in the said
gment book shall contain a reference to the
ber of the roll on which such judgment shall
enrolled, and shall contain a column in which
satisfaction of the said judgment may be
rwards entered, if necessary.
nd by the latter part of sect. 124 the Court
order the whole or any part of the pleadings
e transcribed on the roll, if it shall be deemed
essary for proceedings in error or for any other
pose.
he mode of entering the judgment is very
ilar in both countries, though differing in slight
ils.
n *England* the issue or issues must be entered
the roll, and if the roll has been carried in,
n the Nisi Prius record, with the Master's allo-
ur, is taken to the Master, and he continues the
eedings and enters the judgment on the roll.
he roll has not been carried in, the proceed-
s up to judgment must be entered on it, and
n the roll is taken in.
n *Ireland*, by sect. 124, I. C. L. P. Act, 1853,
en it shall be required to sign any judgment,
attorney requiring the same shall deliver to
proper officer a correct summary or recital of
proceedings, briefly stating the several plead-
s, and the nature thereof, written fairly on
chment, and signed by the attorney, and there-
n the officer shall take off from the pleadings
the several pleadings in the cause in which
n judgment shall be required to be made up,
shall place them, together with the said sum-
y prefixed, in consecutive order upon the file
udgments, in the manner now used, or as may
ereafter directed by any general order of the
ges, there to be kept as the permanent records
of the Court, and shall upon the said summary give the proper award of judgment; and it shall in all cases of enrolling judgments be sufficient to place on the roll a correct copy of the said summary or recital of the proceedings according to fact, together with the award of judgment in proper form, with a reference to the original pleadings on the judgment file, whereby the same may be immediately found and inspected; and no judgment so enrolled under the authority of this Act shall be liable to be disturbed on the ground of error, on account of any omissions hereby authorized.

Common Law.

Joint Statement of Messrs. Jellett and Holland.

In *England*, by R. 56, H. T., 1853, all judgments, interlocutory or final, shall be entered of record of the day when signed, and shall not have relation to any other day; but the Court or Judge may order judgment to be entered *nunc pro tunc*. In *Ireland* all judgments whether interlocutory or final, are intituled with the date on which they were entered.

As to the time for signing judgment, see *post* *Execution*.

Time for signing.

Execution.

In *England*, a party is entitled to sign judgment and to issue execution in 14 days after verdict or nonsuit, whether the cause be tried in or out of term, unless the Judge who tries the cause, or some other Judge or the Court, order it to issue at an earlier or later period. C. L. P. Act, 1852, sect. 120, and R. 57, H. T., 1853.

Execution after trial.

Speedy execution, which is generally understood to mean execution in four days, is granted in practice in all substantially undefended actions for liquidated claims, upon application by the party entitled to execution.

In *Ireland*, the only difference is that a party is entitled (by sect. 127, I. C. L. P. Act, 1853) to mark judgment and issue execution in four days when a cause is tried in term. Speedy execution may be granted by the Judge at the trial, or at chambers, upon an affidavit showing that the fruits of the verdict will be lost by waiting for the usual time to mark judgment.

In *England*, by R. 71, H. T., 1853, no writ of execution shall be issued till the judgment paper, postea, or inquisition has been seen by the proper officer, and a *præcipe* must be filed.

In *Ireland*, by sect. 129, I. C. L. P. Act, 1853, when any execution is demanded the party shall lodge with the officer required to issue such writ a certificate, signed by the party or his attorney, containing such sum as the party demands to be in good conscience due to him after all just and equitable deductions, which certificate shall be filed in the office, and the sum mentioned therein entered in the book wherein executions are entered.

In *England*, forms of writs are given in schedule to rules H. T., 1853, and in *Ireland*, in the second schedule to General Orders, 1854.

Forms of writ.

In *England*, the writ should agree in the mandatory part of it with the judgment in its amount, or show on the face of it why it does not; but it should only be indorsed to levy the sum actually due.

In *Ireland* the exact amount to be levied has to be stated in the body of the writ.

In *England*, by R. 72, H. T., 1853, every writ of execution shall bear date on the day on which it shall be issued, and is tested in the same way as

Teste of writ and return.

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a writ of summons; and all writs may be made returnable on a day certain in term, R. 72, H. T., 1853, and by 3 & 4 Will. 4, c. 67., s. 2, may be made returnable immediately after the execution thereof (Chit. Arch. 559). There are special provisions, by R. 74 and 75, H. T., 1853, for writs of *ca sa*, for outlawry on final process or to fix bails, though in cases of fixing bail the writs may now be tested and returnable in vacation. Sect. 90, C. L. P. Act, 1854.

In *Ireland*, by sect. 191, I. C. L. P. Act, 1853, every writ may be issued and tested, and made returnable on any day, not being a holiday, in term or vacation.

Indorsement on writ.

In *England*, by R. 73, H. T., 1853, every writ has to be indorsed with the name and abode of the attorney suing out the same, or with a memorandum that the writ has been sued out by the plaintiff or defendant in person, mentioning the place of residence of such plaintiff or defendant. And by R. 76, H. T., 1853, every writ of execution shall be indorsed with a direction to the Sheriff or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4 per cent., or at any rate agreed upon by the parties, from the entry of the judgment.

And it is usual to indorse on the writ the place of abode and addition of the party against whom the writ has issued, though there is no rule of Court requiring this. (Chit. Arch. 563.)

In *Ireland*, the only indorsement required is the place of abode, and addition of the party against whom the writ is issued, or such description of him as the plaintiff or his agent can give, but the defendant cannot take advantage of the want of such indorsement. 106, G. O. 1854.

Indorsement for too large a sum.

It may be mentioned here, that in *England*, if a writ of execution has been indorsed for too large a sum maliciously, and without reasonable or probable cause, and the execution debtor has thereby sustained damage, an action will lie by him against the judgment creditor. *Churchill* v. *Siggers*, 3 E. & B., 929.

In *Ireland*, by sect. 129, I. C. L. P. Act, 1853, if the party at whose suit such execution issues shall appear wilfully, fraudulently, and maliciously to have overcharged the party against whom such execution issues, in such case he shall forfeit to the party grieved treble damages. An action will also lie at common law under the same circumstances as in *England* for overmarking a writ of execution.

Payment to sheriff by party arrested.

Again, in *England*, payment by a person arrested under a *ca sa* to the Sheriff, or his officer, or the gaoler, of the sum indorsed on the writ is not deemed a payment to the plaintiff, and does not entitle the person to his discharge, as would be the case if such payment were made to the plaintiff or his attorney. Chit. Arch. 1147. *Woods* v. *Finnis*, 7 Exch. R. 363.

But in *Ireland*, by sect. 139, I. C. L. P. Act, 1853, a plaintiff or defendant arrested under any writ of *capias ad satisfaciendum* shall be entitled to his discharge from such arrest, on payment or tender to the opposite party or his attorney in the cause, or to the Sheriff or gaoler in whose custody such person may be under such writ, of the amount directed to be levied by such writ.

Renewal of writs of execution.

The only differences as to the renewal of writs are, that in *England* the seal of the Court bears the date of the renewal, while in *Ireland* a memorandum of such date has to be made and initialed by the officer of the Court, and that in *Ireland* no writ of *habere* can be renewed without the special leave of the Court or a Judge.

Ground writs are abolished in both countries, and in *England* a plaintiff may have several writs running at the same time either of the same species into different counties, or of a different species, such as a *fi fa* or *ca sa*, into the same or different counties. (Chit. Arch. 552.)

In *Ireland*, by 104, G. O., 1854, the plaintiff may issue any number of writs of execution of the *same* kind into different counties, but the taxing officer shall disallow the costs of such as he may consider unnecessary. It has been doubted whether the plaintiff can issue a second writ of a *different* kind without abandoning the first; but the Irish Statute 35 Geo. 3. c. 30. s. 31, seems to imply that a writ of *elegit* or *fi fa* may issue concurrently with a writ of *ca sa*, although upon the former being executed, the debtor in execution may apply for discharge from custody.

In *England*, the effect of taking the party in execution in general is that it operates as a satisfaction of the debt, and the judgment creditor cannot afterwards have execution against the property of that party.

In *Ireland*, under the 35 G. 3. c. 30. s. 31, Irish Statute, neither the arrest or detainer of a debtor under a writ of *capias ad satisfaciendum*, nor his subsequent discharge with the assent of the creditor operate as a satisfaction of the debt, and though the person of the debtor is exempt from future arrest, his property is still liable to any other species of execution. This statute has not been directly repealed, but the phraseology of the 140th section of the I. C. L. P. Act, 1853, which appears to have been copied, without sufficient consideration of the existing law in *Ireland*, from the 126th section of the C. L. P. Act, 1852, (*England*) has thrown some doubt upon this subject.

In *England*, by R. 80, H. T., 1853, in order to acknowledge satisfaction of a judgment, a satisfaction piece in the form given by the rule is produced, signed by the parties acknowledging the same, or their personal representatives. Such signature must (unless specially dispensed with by a Judge) be witnessed by a practising attorney of one of the Courts expressly named by the parties, and attending at their request, to inform them of the nature and effect thereof before the same is signed, which attorney shall declare himself in his attestation to be the attorney for the parties signing, and state that he is witness as such attorney; and where the satisfaction piece is signed by a representative, his character shall be proved as the master directs. And by a rule of 1857, the clerk of the judgments shall thereupon file the piece, and enter satisfaction in the judgment book, and no roll is required to be carried in.

In *Ireland*, by sect. 143, I. C. L. P. Act, 1853, when any party who shall have recovered judgment in any of the said Courts, or his personal representative or legal assignee, shall be willing to cause an entry of satisfaction thereof, *or a memorandum of part payment*, to be entered on the record, such party shall execute a satisfaction piece according to the form No. 8. in the Schedule B. to the Act annexed (which satisfaction piece shall not be subject to any stamp duty); and such satisfaction

shall be executed in the presence of one
ss, who shall attest by affidavit the execution
same; and thereupon it shall be lawful for
torney of the said Court employed for that
se to require the proper officer to enter
ction or a memorandum of part payment on
cord of such judgment; and such officer
on having such satisfaction piece verified as
aid, and such requisition lodged with him,
such satisfaction or a memorandum of part
nt on the record accordingly.
principal difference, therefore, is, that in
nd there is no provision for entering a
randum of part payment; and attestation by
orney is not required in *Ireland*.
l in *Ireland*, by sect. 144, I. C. L. P. Act,
the Court or a Judge may order a memo-
m of satisfaction to be entered upon the
of any judgment, judgment roll, or judgment
if it shall clearly appear to the said Court
lge that the debt or damages for which the
dgment was obtained have been fully satis-
id discharged.

Attachment of Debts.

proceedings by a judgment creditor to
debts due to the judgment debtor in the
of the garnishee, are the same in both
ies. C. L. P. Act, 1854, ss. 66–67 (*England*),
. L. P. Act, 1856, ss. 63–69 (*Ireland*).
in *England* additional powers are given to
dge by ss. 28–31 C. L. P. Act, 1860. He
his discretion refuse to interfere, where,
he smallness of the amount to be recovered,
he debt sought to be attached, or otherwise,
medy sought would be worthless or vexa-
Again, if the garnishee suggests that the
ought to be attached belongs to some third
, who has a lien or charge upon it, the
may order such third person to appear
him, and state the nature and particulars
claim; and after hearing such third person
y other person whom the Judge may think
call before him, or in case of such third
not appearing, the Judge may order
tion to issue to levy the amount, or the
ent creditor to proceed against the gar-
, and he may bar the claim of such third
, or make such order, and upon such terms
shall think fit.
l by s. 60 C. L. P. Act, 1854, a judgment
or may apply for a rule or order to examine
the judgment debtor as to any and what
are owing to him, before a Master or some
person appointed by the Court or Judge;
he examination is to be conducted in the
manner as in the case of an oral examina-
an opposite party before a Master.
Ireland there are no corresponding pro-

Mandamus and Injunction.

only difference in the proceedings in an
for Mandamus to enforce the performance
es, and in a claim for a writ of injunction,
rom there being no declaration in an action
nd.
England the plaintiff indorses upon the writ
py to be served, a notice that he intends to
writ of mandamus, and thereupon claims
e declaration.

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In *Ireland* the claim is in the writ of summons and plaint, and in such writ are set out the averments which in *England* are required to be set forth in the declaration.

We need only, therefore, notice under this head the two following sections of the C. L. P. Act, 1860 (*England*) to which there are no corresponding enactments in *Ireland*.

In *England*, by sect. 32 C. L. P. Act, 1860, the writ of mandamus or injunction shall, unless otherwise ordered by the Court or a Judge, command the defendant to pay to the plaintiff the *costs* of preparing, issuing, and serving such writ; and payment of such costs may be enforced as costs payable under a rule of Court.

And by sect. 33, writs of injunction against a corporation may be enforced either by attachment against the directors or other officers thereof, as in the case of a mandamus, or by writ of sequestration against their property and effects, to be issued, tested, and made returnable as writs of execution, and to be proceeded upon and executed as writs of sequestration out of the Court of Chancery.

Costs.

We have thought it more convenient to consider in our separate reports the law and practice as to costs in the two countries, because the constitution and jurisdiction of the county Courts in England and of the Civil Bill Courts in Ireland are so much involved in such consideration.

The main difference, it will be seen, with regard to actions of *tort* has been created by the last Common Law Procedure Act, 1860, in *England*.

With regard to actions of *contract*, some difference arises from the peculiar provisions of the County Court Acts and Civil Bill Courts, but substantially the law is much the same in both countries.

With regard to the costs where there are *several issues*, the provisions of sect. 81, C. L. P. Act, 1852 (*England*) correspond with the provisions of sect. 60, C. L. P. Act, 1853 (*Ireland*); and though there is no special rule in *Ireland* corresponding to Rule 62 H. T., 1853, in *England*, yet the practice in *Ireland* is the same as that stated in Mr. Holland's separate Statement (page 52).

Assignment of Breaches on Penal Covenant.

Assignment and suggestion of breaches.

In *England* in an action on a bond, &c. within 8 & 9 W. 3. c. 11, the plaintiff may set forth the condition of the bond in his declaration, and *assign* the breaches therein. If the declaration is on the bond generally without setting out the condition, and the defendant plead a plea, as, for instance, general performance, which made it necessary at common law for the plaintiff to assign a breach in his replication, the plaintiff must still *assign* the breach or breaches in his replication; if the defendant plead any plea, as, non est factum, &c., on which the plaintiff might have taken issue without assigning a breach, the plaintiff must enter a *suggestion* of breaches under the statute. If judgment be given for the plaintiff on a demurrer, or by confession, or nihil dicit, the plaintiff may *suggest* on the roll as many breaches as he think fit.

In *Ireland* in any action on any bond, &c. within the statute, the plaintiff may assign one

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Ascertaining damages.

Judgment and execution.

or more than one breach in his summons and plaint. Sect. 145, I. C. L. P. Act, 1853.

In *England* the damages are ascertained by a jury or by a Sheriff (3 & 4 W. 4. c. 42. s. 16) or in cases of difficulty they may be ascertained before the Chief Justice or a judge of assize.

In *Ireland* they are ascertained by a jury or by a Master. Sect. 146, I. C. L. P. Act, 1853.

In *England* the judgment is for the penalty, damages and costs, and the writ of execution pursues the judgment, but must be indorsed to levy only the damages given and costs of increase and interest on those sums, with reasonable charges for executing the writ.

In *Ireland* judgment is entered for the full amount of the penalty, with an award of the payment of damages assessed, if any.

Payment into Court by the defendant.

In *England* the payment into Court is made "to the use of the plaintiff his executors or administrators."

In *Ireland* it is made "to the credit of the cause."

The same proceedings follow in both countries upon such payment into court, viz, a stay of execution entered on the record; and the judgment stands as a security for further breaches.

Suggestion of further breaches.

In *England*, if after the first trial, the defendant is guilty of further breaches, the plaintiff must sue out a *scire facias* (except in cases of judgment upon warrants of attorney), and thereupon suggest the further breaches, and the proceedings upon the *scire facias* are the same as in the original action.

In *Ireland*, in the case of further breaches, the plaintiff is at liberty to file one or more than one suggestion of such breaches, and such suggestion is pleaded to, and the truth of the matter is tried and damages are awarded, and judgment and execution given in like manner, as if the same were on summons and plaint, or if the judgment requires to be revived, he may incorporate the suggestion of breaches with the writ of revivor.—107. G. O., 1854.

PROCEEDINGS TO REVIVE JUDGMENTS AND OTHER PROCEEDINGS BY AND AGAINST PERSONS NOT PARTIES TO THE RECORD.

Execution without revival.

The provisions as to the time of issuing writs of execution without revival, are the same in both countries.—See C. L. P. Act 1852, sect. 128 (*England*), and C. L. P. Act, 1853, sect. 148 (*Ireland*).

Proceedings to revive.

The proceedings to revive a judgment are either by suggestion by leave of the Court or a Judge, *or* by writ of revivor.

1. Suggestion.

The form of the suggestion is the same in both countries.

2. Writ of revivor.

The form of the writ of revivor slightly differs, as will be seen by looking at the forms in the Schedule to this Statement, No. 5 & 6.

In *England*, if the party called upon appears, (which is done by notice in writing to the plaintiff or his attorney, C. L. P. Act, 1852, sect. 133,) a declaration is necessary, and the pleadings and proceedings are the same as in an ordinary action.

In *Ireland* no declaration is needed, and the pleadings and proceedings are the same as in an ordinary personal action, and the plaintiff may incorporate in the writ of revivor a suggestion of breaches.—107 G.O., 1854.

In *England* it is doubtful whether proceedings can be taken to revive an *interlocutory* judgment after it has been signed six years. (Chit. Arch. 1058.)

In *Ireland* a form for reviving such *interlocutory* judgment is given in Schedule B. to I. C. L. P. Act, 1853, form 11 A.

In *England*, if a judgment is more than ten years old, a rule of Court or Judge's order is necessary. The rule is absolute in the first instance, and the order is made *ex parte*. If the judgment is more than fifteen years old, a rule to show cause is necessary; and a writ of revivor to revive a judgment cannot be sued out after twenty years, unless part payment has been made, or some written acknowledgment has been given. See Chit. Arch. 1058. An affidavit is necessary. (Chit. Arch. 1071.)

In *Ireland* if a judgment is more than ten years old, the order of the Court or a Judge is necessary; and by 109 G.O., 1854, when an application shall be made to issue a writ of revivor on a judgment above ten years from the entry thereof, the same shall be grounded on affidavit, stating the amount remaining due on foot of the judgment, and the character in which the applicant claims to be entitled to issue the writ, and against whom it is sought to be issued; and in case twenty years have elapsed from the entry of the judgment, such affidavit shall state matter sufficient to take the case out of the statute of limitations, and in the latter case the order shall be conditional only in the first instance, unless for special reasons the Court otherwise directs.

In *England* the above rules apply to judgments in ejectment.

In *Ireland* by 108 G.O. no writ of *scire facias* or revivor, to revive a judgment in ejectment, shall issue without an order of the Court, or motion of counsel.

In *England* by R. 78 H.T., 1853, a plaintiff shall not be allowed a rule to quash his own writ of *scire facias* or revivor, after a defendant has appeared, except on payment of costs.

In *Ireland* there seems to be no such provision and the General Order 44, Easter 1834, which was in terms the same as the English order, has been repealed by the G.O., January 1854, and has not since been re-published. It would, therefore, seem that the plaintiff may in all cases quash the writ without payment of costs.

The provisions in sect. 132 C. L. P. Act, 1852, taken with sect. 91 of C. L. P. Act, 1854 in *England* correspond with the provisions of sect. 153 C. L. P. Act, 1853 in *Ireland*; and all the writs of *scire facias* mentioned in these sections are to be tested, directed, and proceeded upon as writs of revivor.

The only difference is that in *England* a *scire facias* upon a suggestion of further breaches after judgment for any penal sum under 8 & 9 W. c. 11. is still necessary, while in *Ireland* such *scire facias* is, it would seem, superseded by the suggestion under sect. 147 I. C. L. P. Act, 1853, by a suggestion of breaches incorporated with writ of revivor under the General Order before referred to.

DEATH, MARRIAGE, AND BANKRUPTCY.

It is not necessary to enter into any detail under this head, as the practice is the same in both countries, and only differs in the mode of entering suggestions of death upon the pleadings arising from the difference in form of pleading

In *England* the proceedings are regulated by
cts. 135–142 and 161–167 C. L. P. Act, 1852,
d sect. 92 C. L. P. Act, 1854.
In *Ireland* they are regulated by sects. 155–
2 and 182–188 I. C. L. P. Act, 1853, and sect.
I. C. L. P. Act, 1856.

Error.

There is hardly any difference in proceedings
error in the two countries, and such difference
exists is in small matters of detail.
In *England* the proceedings are regulated in
linary cases by secs. 146–167 C. L. P. Act,
52, and in ejectment by sect. 208 C. L. P. Act,
52.
In *Ireland* the proceedings are regulated by
cts. 166–188, I. C. L. P. Act, 1853.
The differences may be stated as follows:—
In *England* notice of bail may be given within
e time for putting in bail.
In *Ireland* two days' notice must be given
fore the time for putting in bail, 195 G. O.,
54.
In *England* the plaintiff below is not required
give bail, but if he is a foreigner, and residing
road, he has been required to give security for
sts.—3. E. and B. 829.
In *Ireland* he must give bail in double the
sts adjudged to be paid to the defendant, I. C. L.
Act, 1853. s. 172.
In *England* if error is brought in the House of
ords from the Exchequer Chamber, fresh bail
ust be put in.
In *Ireland* the bail are made responsible for
e costs of proceeding in the House of Lords.
In *England* in ejectment the bail in error are
ound with a condition that if the judgment shall
affirmed by the Court of Error, or the proceed-
gs in error be discontinued by the plaintiff
erein, then the plaintiff in error shall pay such
sts, damages, and sum or sums of money as
all be awarded upon or after such judgment
firmed or discontinuance; and the Court wherein
xecution ought to be granted upon such affirma-
on, or discontinuance, upon the application of
e claimant, may issue a writ to inquire as well
the mesne profits as of the damage by any
aste committed after the first judgment in eject-
ent, which writ may be tested on the day on
hich it shall issue, and be returnable immediately
ter the execution thereof; and upon the return
ereof judgment shall be given, and execution
varded for such mesne profits and damages, and
so for costs of suit, sect. 208. C. L. P. Act, 1852.
In *Ireland* in ejectment in cases of error brought
y the defendant, bail must be given for double
e yearly value of the property adjudged to be
covered, and double the costs. Sect. 172.
C. L. P. Act, 1853.
In *England* if error is brought by one of several
ersons, the memorandum alleging error *and* the
ote of the receipt of such memorandum are to
ate the names of the persons bringing error.
In *Ireland* the note of the receipt only is to
ate such names.
In *England* where error is brought in the
ouse of Lords, the Master brings the record to
e Clerk of the House.
In *Ireland* a transcript of the record is pre-
ared and forwarded to the House of Lords.
In *England* the Court of Error can give interest
for delay of execution, whether the judgment is
or is not affirmed. (Chit. Arch. 535.)

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In *Ireland* this power is confined to cases when
judgment is affirmed, sect. 177, I. C. L. P. Act,
1853.

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In *England*, by R. 64, H. T. 1853, the plaintiff
must assign error within eight days after the filing
of the memorandum of error in fact, or judgment
of *non pros* may be signed. And by R. 65, H. T.
1853, no rule to plead is necessary, but four days'
notice to plead may be given. Signature of
counsel is not required, and the assignment and
pleadings are delivered, as in ordinary cases, to
the opposite party.

Error in fact, assignment of.

In *Ireland* by 196. G. O., 1854, in case of
assignment of error, notice of the filing thereof
and other pleadings in error, and a copy of such
assignment and pleadings has to be served, and
the assignment or other pleading is considered as
filed only on the day of such service, *and every
assignment and pleading in error has to be signed
by the counsel and attorney.*

Error in law, paper books, &c.

In *England*, by R. 68, H. T. 1853, four clear
days before argument copies of the judgment roll
of the Court below have to be given by the
plaintiff and defendant in error to the Judges of
the Exchequer Chamber; and statements of the
grounds of error, not signed by the counsel or
attorney, are delivered at the same time.

In *Ireland*, by 198. G. O., 1854, the paper
books contain a copy of the record and suggestion
or assignment of errors, and the pleadings, if any,
with the names of the counsel and attorney, and
a statement signed by counsel of the points in-
tended to be argued, and an index of the docu-
ments.

Error for judgment on costs.

In *England*, by R. 27, T. T. 1853, in *no* case
shall error be brought for any error in a judgment
with respect to costs, but the error, if any, in that
respect, may be amended by the Court in which
such judgment may have been given, on the
application of either party.

In *Ireland*, by 200. G. O., 1854, error cannot
be brought in such case *until after application* to
the Court, in which such judgment may have
been given, to amend the judgment in that
respect.

Error by legal representative of deceased.

In *England* it would seem that error can only
be brought by a legal representative by a *scire
facias ad audiendum errores*, and not by a sugges-
tion. (See *Curlewis* v. *Earl of Mornington*, 27 Law
Journ. Q. B. 269).

In *Ireland*, by sect. 167, I. C. L. P. Act,
1853. If any person is or shall be entitled to
bring error as heir or personal representative of
any party, plaintiff or defendant, such person
may, by leave of the Court or a Judge, enter a
suggestion of the death, and that he is such legal
representative, which suggestion shall be embodied
in the memorandum of error, and shall not be
traversable, but shall only be subject to be set
aside on application to the Court or a Judge, on
motion, if untrue, and the like proceedings in
error may thereupon be taken at the suit of such
legal representative.

Interpleader.

Inter-pleader.

The difference between the practice in the two
countries upon this subject entirely arises from the
additional provisions in *England* on this subject
introduced by the C. L. P. Act, 1860, by which
the cases in which an interpleader rule may be

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granted have been extended, and the jurisdiction of the Court or Judge in all cases of interpleader considerably enlarged.

In *England* proceedings in interpleader are regulated by the Act 1 & 2 W. 4. c. 58. ss. 1–7, and the C. L. P. Act, 1860, ss. 12–18.

In *Ireland* the proceedings are regulated by the Act 9 & 10 Vict. c. 64, the sections of which are an exact transcript of the sections of the Act 1 & 2 W. 4. c. 58, above referred to.

The difference between the practice in the two countries may be stated as follows:—

Interpleader where titles of claimants have not common origin.

In *England*, where an action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be taken in execution under process of Superior Courts, and the defendant in such action, or the Sheriff, has applied for relief under 1 & 2 W. 4. c. 58., the Court or a Judge may exercise all the powers given by that Act though the titles of the claimants to the money, goods, or chattels, or the proceeds thereof, have not a common origin, but are adverse to and independent of one another; sect. 12, C. L. P. Act, 1860.

In *Ireland* an interpleader rule would not be granted in such case at the instance of an ordinary bailee. See *Scott* v. *Midland Railway Co.*, 2 Irish C. L. Reports, p. 83.

Sale of goods seized may be ordered.

In *England*, where goods or chattels have been seized in execution by a Sheriff or other officer under process of the Superior Courts, and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels, by way of security for a debt, the Court or a Judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt, or otherwise, as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Court or Judge may seem just; sect. 13, *ib.*

In *Ireland* such a course can only be adopted by consent of the parties.

Power to Court or Judge to decide summarily in certain cases.

In *England*, upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, the Court or Judge, wherever, from the smallness of the amount in dispute or of the value of the goods seized, it shall appear to them or him desirable so to do, at the request of either party, may dispose of the merits of the respective claims of such parties, and determine the same in a summary manner, upon such terms as they or he shall think fit, and may make such other rules and orders therein as to costs and all other matters as may be just; sect. 14, *ib.*

Special case may be stated where facts undisputed.

And by sect. 15 in all cases of interpleader proceedings, where the question is one of law, and the facts are not in dispute, the Judge, at his discretion, may decide the question without directing an action or issue, and, if he think it desirable, may order that a special case be stated for the opinion of the Court.

Judgment and decision when to be final.

And by sect. 17, the judgment in any such action or issue as may be directed by the Court or Judge in any interpleader proceedings, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

In *Ireland*, the Court or a Judge have no power to decide disputed questions, whether of law or fact, without directing an issue, unless all parties consent.

REPLEVIN.

In *England* by 19 & 20 Vict. c. 108. sect. 63 (which act is extended to all cases of replevin by C. L. P. Act, 1860, sect. 22) the powers and responsibilities of the Sheriff with respect to replevin bonds and replevin are put an end to. The registrar of the County Court of the district in which the distress is taken, grants the replevin, approves of the replevin bond, and issues all necessary process in relation thereto, which is to be executed by the high bailiff of the County Court. The registrar causes the goods to be replevied to the party whose goods have been distrained on his giving security, which differs according as the party intends to commence an action in the Superior Court or in a County Court. By sect. 65 an action of replevin may be commenced in any Superior Court in the form applicable to personal actions therein, and the replevisor shall, at the time of replevying, give security, to be approved of by the registrar, to cover the alleged rent or damage in respect of which the distress has been made, and the probable costs, conditioned to commence an action of replevin in such Superior Court within one week from the date thereof, and to prosecute such action with effect and without delay, and unless judgment be obtained by default, to prove in such Court that he had good ground for believing either that title was in question, or that such rent or damage exceeded twenty pounds, and to make return of the goods, if a return be adjudged.

And by sect. 71, where security is required to be given, a deposit of money may be made in lieu thereof, and a Judge of the Superior Court or of the County Court, as the case may be, may on the same evidence as would be required to enforce or avoid the bond, order such sum to be paid out.

In *Ireland* by sect. 228 of I.C.L.P. Act, 1853, where any party whose goods or chattels have been taken or distrained shall dispute the validity of such taking or distress, and shall be desirous of proceeding for the recovery of such goods and chattels in any of the said Superior Courts, such party may commence a personal action for the recovery of the goods or chattels so taken or distrained by a writ of summons and plaint, which writ of summons shall, in addition to any particulars herein-before required in an ordinary writ of summons, state the particulars of the property taken or distrained, and the place where such taking, seizure, or distress shall have been made, and shall be served by delivering a copy or copies thereof to the defendant or defendants, or to any agent or other person acting for him or them in making such seizure or distress, or in keeping the goods and chattels so taken or distrained, in the manner herein-before provided in respect of an ordinary writ of summons.

And by sect. 229, when any such personal action shall have been so commenced, the plaintiff therein may sue out of the Court in which such action shall be instituted a writ, to be called a writ of replevin, in the Form No. 23 in the Schedule B. to the Act annexed, directed to the sheriff of the county in which such goods and chattels shall be under seizure or distress, requiring him to replevy the said goods and chattels, and the said sheriff shall, upon good security (by

ıe bond of the plaintiff, and two responsible ersons as sureties, conditioned as usual in such ases,) being given to him, in double the amount the value of the property taken or distrained, xecute such writ, and return the said writ, with correct and proper statement endorsed thereon the manner in which the same shall have been xecuted, or the cause why the same has not been xecuted, to the Court out of which the same all have issued, within eight days, exclusive of ıy days appointed to be observed and kept as lidays, next after such writ shall have been livered to him; and the value of the property taken or distrained shall be ascertained by the id sheriff in like manner as the value of goods strained is ascertained by law by the sheriff in king security in replevins, and the said bonds all be assignable by the sheriff under like cirmstances and in like manner, and shall be ailable to the assignee thereof, as by law now hereafter authorized in respect of replevin nds.

The differences, therefore, between the practice the two countries are as follows: that,

In *England* the goods are replevied *before* action mmenced in the Superior Court, and in almost cases are delivered to the plaintiff on replevyg them, and the registrar of the County Court kes the replevin bond.

In *Ireland*, the goods are obtained *after* the tion has commenced by a subsidiary writ of plevin, and the sheriff takes the bond.

Again, in *Ireland* the writ of summons and aint, in addition to the particulars required in y ordinary writ, must state the particulars of e property taken or distrained, and the place the caption, as above mentioned, and a special ode of service is provided.

In *England* the action must be commenced thin one week from the date of the replevin nd, and must be prosecuted without delay. ıe proceedings and times for pleadings are the me as in ordinary actions, and the venue is al.

In *Ireland*, by sect. 100, I. C. L. P. Act, 1856, the plaintiff in replevin neglect to file the sumons and plaint, or a copy thereof, within ten ys after service, unless the time is extended, or proceed to trial within one term from that in ich or the vacation of which the defence or ıer subsequent proceeding is filed, the defennt may proceed to enter such rules as are proled by sections 38 and 106, I. C. L. P. Act, 53.

In *England* the declaration states in general ms the taking of the goods. If the defendant ists that the goods were lawfully taken by him his own right, the plea is called an *avowry*, if the right of another, it is called a *cognizonce*. ıe plaintiff's next pleading is called a plea in bar, d that of the defendant a replication, and so on.

In *Ireland* an appearance and defence is filed in e same manner as in an ordinary personal action, er which the same steps are taken to bring the ıse to an issue by the filing of a replication or ıer pleadings, if necessary, and by serving an stract of issues as in other personal actions.

In *England* by C. L. P. Act, 1860, sect. 23, e plaintiff in replevin may, in answer to an owry, pay money into Court in satisfaction in é manner as in an ordinary action; and by t. 24 such payment does not work a forfeiture the replevin bond.

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In *Ireland*, by 9 & 10 Vict. c. 111. s. 11., in every case of *distress for rent* a tender of the rent in arrear, and of the charges of such distress at any time before the sale of the property distrained, shall be sufficient to stay the proceedings on such distress and to entitle the party distrained upon to a return of the property so distrained, and the party whose goods shall be distrained may plead such tender in bar to any avowry or cognizance. The effect of this provision, therefore, is, that in cases of distress for rent a tender may be made after impounding and before sale, and may be pleaded by way of replication to a defence justifying the distress; and upon such defence money may be paid into Court as in other cases of tender. With the foregoing exception, money cannot be paid into Court in this action.

Inquiry before Sheriff in case of replevin of distress for *rent* after judgment or verdict.

In the case of an action of replevin for goods distrained for *rent*, the proceedings and inquiry before a sheriff and jury after judgment of *non pros.*, or for the defendant on demurrer, and the inquiry as to the rent due and value of the goods by a jury at *Nisi Prius* in case of verdict for defendant or nonsuit of the plaintiff after issue joined, are regulated by 17 Car. 2. c. 7. in *England*, and by sect. 230. I. C. L. P. Act, 1853, extended by sect. 101. I. C. L. P. Act, 1856, in *Ireland;* and they are substantially the same.

In *England*, however, the inquiry can only be taken before a sheriff or a jury; in *Ireland* it may be taken by a Master in case of judgment on demurrer.

In *England*, fifteen days' notice of the sitting of the inquiry has to be given to the plaintiff or his attorney.

In *Ireland*, ten days' notice of the holding of the inquiry is given as in writs of inquiry in personal actions.

In *England*, in case of judgment on demurrer, the inquiry is as to the value of the distress and not as to the arrears of rent.

In *Ireland*, the writ of inquiry is the same in all cases, and comprehends both the amount of the rent in arrear at the time of the distress and the value of the goods distrained.

Judgment.

In *England* the judgment for the plaintiff awards damages for the unlawful taking, or, if the goods have not been delivered to the plaintiff on replevying them, for the value of the goods as well as damages for their detention. The judgment for the defendant is that he have a return of the goods; and if the distress was for *rent*, and there has been an inquiry under 17 Car. 2. c. 7., then the judgment is, under that statute, for costs of suit and for the amount of arrears of rent *in case the goods distrained amount to that value, and in case they do not, then for so much as the value of the said goods distrained amounts to.* In the latter case, distress may be made from time to time for the residue of such arrears. Full indemnity for all expenses can be had under 5 & 6 Vict. c. 96. s. 2.

In *Ireland* the defendant has judgment for a return of the goods, and in case of a distress for *rent* he has judgment against the plaintiff for the *arrears of rent*, (ascertained by an inquiry under sect. 230. I. C. L. P. Act, 1853,) *whether the value of the goods and chattels distrained shall amount to so much or not;* sect. 101. I. C. L. P. Act, 1856.

Judgment at common law in action of replevin.

It may be mentioned here that the statute of 17 Car. 2. c. 7. (*England*), corresponding to the 7 W. 3. c. 22. (*Ireland*), which applies only to the

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case of a distress for *rent*, does not take away or alter the judgment at common law; it only gives a further remedy to the avowant. But as the judgment at common law of *non pros.*, or for the defendant, or after a nonsuit, is the same in both countries, it is not necessary to allude to it further.

Execution.

The proceedings to execution for the plaintiff or for the defendant are the same in both countries, and need not, therefore, be set forth. But it may be useful to state generally with respect to replevin, that the 17 Car. 2. c. 7. (England), corresponds with 7 W. 3. c. 22. (Ireland), and 21 Hen. 8. c. 19 (England), corresponds with 33 Hen. 8. st. 1. c. 7. (Ireland).

Removal of replevin from inferior Court.

In *England* any action of replevin brought in a County Court can be removed into a Superior Court by writ of *certiorari*. The defendant has to give security, to be approved of by the Master, not exceeding 150*l*., (19 & 20 Vict. c. 108. s. 67), or a deposit may be made under sect. 71.

In *Ireland*, by 192. G. O. 1854, the mode of removing any action of replevin commenced in any inferior Court, is by the writ of *recordari facias loquelam*, and the mode of proceeding under such writ is the same as in the case of a writ of *certiorari*.

In *England*, a plaintiff will be deemed out of Court unless he declare within one year from the return of the certiorari.

In *Ireland* the plaintiff will be deemed out of Court, unless he file a writ of summons and plaint within six months from the return of the certiorari.

Ejectment.

In *England* the Proceedings in Ejectment are mainly regulated by the C. L. P. Act, 1852, sects. 168–221; by the C. L. P. Act, 1854, sect. 93; the C. L. P. Act, 1860, sects. 1–11; and Rules 112–114, H. T. 1853.

In *Ireland*, they are regulated by 1 & 2 W. 4. c. 31, sects. 12 & 13; I. C. L. P. Act, 1853, sects. 194–227 inclusive; 23 & 24 Vict. c. 154, sects. 3, 23, 24, 48, 52, 53, 55–58, 60–62, 64–66, 70, 72–77, 94–96; the I. C. L. P. Act, 1856, sects. 89, 94, and 95; G. O., 1854, 184–191, inclusive; and G. O., 1856, 3 and 4. Following the order which has been adopted in our separate reports, we shall first state the difference in actions of ejectment in ordinary cases.

1. *Ejectment in Ordinary Cases.*

Form of writ.

In *England* the action is commenced by a writ of ejectment, the form of which is given in the schedule to this report, No. 7. The writ is directed to the *persons in possession by name, and to all persons entitled to defend* the possession of the property claimed, which property is to be described in the writ, with reasonable certainty; and it requires them to appear at the suit of the claimants, (naming them,) within *sixteen* days after service thereof; and contains a notice that in default of appearance, judgment will be signed and they will be turned out of possession. The writ continues in force for *three* months, and there are no means of renewing it.

In *Ireland* an ejectment is commenced by writ of summons and plaint, of which the form is given in the schedule to this report, No. 8. The writ is directed to the *immediate tenant, or any one tenant in possession*, as the defendant, with the addition of the words "and all persons concerned." The writ requires the defendant to appear within *twelve* days from service. It remains in force for *six* months, and may be renewed in the same manner as the writ of summons and plaint in personal actions. The practice as to issuing and filing the writ in personal actions applies to ejectment. The lands must be described by the barony or parish in which they are situate.

In *England* the tenant or tenants in actual possession only need be served; and every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, has forthwith to give notice of it to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years' improved or rack rent of the premises to the person of whom he holds, C. L. P. Act, 1852, sect. 209.

In *Ireland*, the service must be effected on every person in possession of the lands sought to be recovered, or any part thereof, or in receipt of the rents and profits, or any part thereof, or claiming to be entitled to the present receipt of the same, or any part thereof, 184th G. O. 1854; There is no enactment requiring any notice to be given by the persons served.

The mode of service is very similar in both countries. In *England* it is regulated by sect. 170, C. L. P. Act, 1852, which enacts that the writ shall be served in the same manner as an ejectment has heretofore been served, or in such manner as the Court or a Judge shall direct; and in case of vacant possession, by posting a copy thereof on the door of the dwelling house or other conspicuous part of the property.

Regular service may be effected on the tenant himself or his wife; on the tenant it may be served anywhere within or without the jurisdiction; on the wife at the premises, or it seems anywhere else, provided she is living with her husband. Service on a child or servant, or other member of the family, on the premises, suffices, if an acknowledgment is made by the tenant of having received the writ; and a rule *nisi* would have been granted before the Act, upon proof of other special facts from which it might be reasonably inferred that the writ reached the tenant's hands.

Where the service cannot be effected in such a way as would before the Act have entitled the plaintiff to a rule absolute for judgment, it should be made in the best possible way, and an application should then be made upon an affidavit to a Judge, under sect. 170, and he will order in what other manner, if any, service shall be effected.

In *Ireland* the mode of service is regulated by sect. 197, I. C. L. P. Act, 1853, (which is an exact transcript of sect. 170, C. L. P. Act, 1852, and by 188th G. O. 1854, which directs that the writ of summons and plaint in ejectment may be served personally on any party to be served therewith, wherever he may be found *within the jurisdiction*, or at his usual place of residence wherever it may be *within the jurisdiction*, or on his servant or on his wife, child, or other member of his family being an inmate of the house, and aged 16 years and upwards; and in all cases where such service shall not have been effected, an application may be made to the Court to substitute service, or have any service already made deemed good. Service therefore cannot be effected on the tenant

his wife out of the jurisdiction, and if effected hin the jurisdiction on a member of his family, a servant being an inmate of his house, it uires no order of a Judge to consummate the vice; in other respects, the practice is the same in *England*.

The cases in which service of an ejectment eady effected will be declared sufficient are the ne as in *England*, and usually a conditional er only is pronounced in the first instance.

In *England*, the next step is for the defendant enter an appearance, which in form is a simple morandum, similar to that in personal actions. e time allowed for this purpose is 16 days from vice. Any person appearing to defend as land- l in respect of property, whereof he is in session only by his tenant, must state in his pearance that he appears as landlord, and such son is only at liberty to set up any defence ich a landlord might have done before the L. P. Act, 1852. No notice of appearance is uired to be given by persons named in the t, but persons not named in the writ, who ain liberty to appear and defend on application the Court or Judge, have to give notice of h appearance to the plaintiff, or his attorney, 113, H.T., 1853. If the defendant intends to it his defence to part of the property mentioned the writ, he must serve a notice, describing t part, within four days after appearance; and appearance without such notice will be deemed be an appearance to defend for the whole, t. 174, C. L. P. Act, 1852. In like manner the case of defence by joint-tenants, tenants in nmon or coparceners, who admit the title of plaintiff, but deny ouster, notice to this effect uld be served at the time of appearance, or hin four days after; and within the same time affidavit should be filed in the Master's office ifying these facts, sect. 188, C. L. P. Act, 1852. uitable defences cannot be pleaded, for, as nted out hereafter, there are no pleadings in s action.

In *Ireland* defence is taken by filing an appear- e and defence as in personal actions. This is ictly a pleading, and must be filed within 12 days m service, in the same manner as the appearance l defence in personal actions. It states the sub- ntial ground of defence, *e.g.*, that the title of plaintiff is disputed, (sect. 198, I. C. L. P. Act, 53,) or in cases of joint-tenants, &c., that ouster lenied; and if the defence is only for part of premises sought to be recovered, it should be so pressed, otherwise the defence will be deemed apply to the whole. There is no special form appearance and defence by a landlord. Notice filing the appearance and defence must be given all cases. No affidavit is required in a defence joint-tenants, &c., where ouster is denied. stly, equitable defences may be pleaded in the ne cases as in personal actions.

The mode of signing the judgment by default, l the forms of judgment for the whole or part the premises are the same in both countries.

In *England*, however, an affidavit of the service the writ has to be filed before signing such lgment, or where personal service has not been ected, a Judge's order, or a rule of Court thorizing the signing such judgment, has to be tained and filed, R. 112, H.T., 1853. A judg- nt by default for part need not be recited in the si Prius record.

In *Ireland*, an affidavit of the service of the summons and plaint must be filed before judgment by default can be marked, and the master must see that a proper affidavit is filed before he permits judgment to be signed. A memorandum of a judgment by default for part has to be recited in the abstract for Nisi Prius, or judgment thereafter to be made up, sect. 201. I. C. L. P. Act, 1853. By 185th G. O. 1854, there are special provisions made as to the contents of affidavits of service of ejectment on title, which are not found in *England*.

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In *England* the issue is made up at once upon an appearance being entered, *without pleadings*, by the claimant or his attorney, setting forth the writ, and stating the fact of appearance, with its date, and the notice limiting the defence, if any, of each of the persons appearing, so that it may appear for what defence is made. A notice by a joint-tenant, &c., under sect. 188, C. L. P. Act, 1852, limiting the defence to the question of ouster, must be entered in the issue. The issue must be delivered to the opposite party, or his attorney, if he defend by attorney, with notice of trial as in ordinary cases, but ought not to be so delivered until the expiration of four days from the time of entering the appearance, as until that time it will be uncertain for what part of the property the defendant defends.

Issue.

The claimant proceeds to trial upon the issue in the same way as in other actions; and the particulars of the claim, and defence (if any), are annexed to the Nisi Prius record, which contains, as in ordinary cases, a transcript of the issue delivered.

Record.

In *Ireland* an abstract of the issue for Nisi Prius is made up as in personal actions. (See Schedule to this Statement, No. 9). In cases of actions and defences by joint-tenants, &c., the abstract for Nisi Prius contains the additional issue whether an actual ouster has taken place.

Nisi prius abstract issue.

The differences in relation to the proceedings to trial, such as notice of trial and countermand; rule for not proceeding to trial; summoning juries; and in relation to the conduct of the trial, are the same as in personal actions. There is one difference, however, of great importance in the powers possessed by the Courts in the two countries at this stage of the proceedings.

Proceedings to trial, and interlocutory proceedings.

In *Ireland* the Court has power to make an Order directing temporary bars to be waived, and the real title tried, in any case in which it shall be made appear to the satisfaction of the Court that a decree or decretal order to the same effect would be pronounced by the Court of Chancery upon a bill or cause petition filed for the purpose of having temporary bars waived. I. C. L. P., Act 1856, sect. 89.

Power to remove temporary bars.

In *England* the Court has no such power.

In *England* as well as in *Ireland* the question at the trial, except in the case of joint-tenants, &c., where the question of ouster has to be tried, is, whether the statement of the title is true or false, and which plaintiff is entitled, and to what part of the property.

Questions to be tried at the trial

But in *Ireland* there is the additional question whether the plaintiff is entitled to any, and, if any, to what damages, by way of compensation for loss of mesne rates and profits, sect. 202, I. C. L. P Act 1853; and proof of such damage can be given in case of non-appearance of the defendant at the trial, *ib.*, sect. 205.

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In *England* the plaintiff recovers mesne profits, if any, in a separate action. (See Mr. Holland's separate Statement, page 55.)

The enactments under this head are the same in both countries, but in *England* by Rules 29 and 30, T. T. 1853, special provisions are made to secure the costs of the suit to the party appearing, in default of appearance of the opposite party.

Non-appearance at trial.

Verdict and judgment.

In *England* no damages are recoverable in ejectment for loss of mesne rates and profits, except in cases between landlord and tenant under C. L. P. Act 1852, sect. 214. In all other cases a verdict for the plaintiff only establishes his title to the possession of the lands; and judgment is signed only for the recovery of the possession of the whole or part of the property, and for costs.

In *Ireland* in cases of ejectment on title judgment is signed for the recovery of possession of the whole or part of the property, and for such damages for loss of mesne rates and profits as shall be found by the jury, and for costs.

Execution.

In each country the writ or writs of execution follow the judgment.

In *England* therefore the writ or writs cannot include any sum for damages for loss of mesne rates of profits, except in case of landlord and tenant.

In *Ireland* the sum recovered for damages may be recovered in the same manner as the costs of the action.

In both countries there may be either one writ or separate writs of execution, and a *fi. fa.* or *ca. sa.* may be incorporated with the writ of *habere facias possessionem.*

Mode of executing habere facias.

In *Ireland* the sheriff may, with the written consent of the plaintiff or his attorney, execute the *habere* without removing any under-tenants or occupiers who shall at the time of such execution sign with his name or mark an attornment or acknowledgment of title, attested by the sheriff, officer, or bailiff. The attornment or acknowledgment must be annexed to the writ, and a copy given to the plaintiff or his attorney. A writ thus executed will have the same operation as if it had been executed in the ordinary mode, and as if such tenant or occupier had been actually dispossessed. The writ of *habere* when thus executed may be renewed at any time within six months, but this renewal is not to prejudice any right vested in the plaintiff by the first execution of the writ or decree. Where possession has been unlawfully resumed within six months after the execution of the writ by any former tenant or occupier, the plaintiff in the ejectment, or his representatives, may, upon proof of the facts, and the service of notice of the application, obtain a certificate from a magistrate that a sufficient case has been shown to execute the writ anew; and upon the production of such certificate, the writ may be executed anew by the sheriff as to the portions of land of which possession has been thus taken. 23 & 24 Vict. c. 154. sects. 94–96.

And by the 11 & 12 Vict. c. 47. s. 2. no writ of *habere* shall be executed on Christmas Day or Good Friday, nor within two hours before sunset, nor before sunrise, or six o'clock in the morning, and 48 hours previous notice must be given by the landlord to the relieving officer of the electoral division in which the lands are situate, of his intention to execute the writ. If there are any inhabited dwelling houses on the land, the occupiers of which have not received notice as tenants for the determination of their tenancies, or have not been served with notice of the action or other proceeding under which the writ is to be executed, the owner must serve every such occupier, who has been in possession more than 21 days before the execution of the writ, with seven days notice of his intention to execute it.

In *England* there are no enactments corresponding with those above stated, but the tenant or tenants in possession, in order to save the expense of executing a writ of possession, may attorn to the plaintiff. A form of attornment is given in Chitty's Forms, 552. In other respects the mode of executing the writ of *habere*, and of recovering the costs in the action by execution, is the same in both countries.

The mode of confessing the action is substantially the same in both countries.

In *England* however, it is effected by a notice signed by the defendant, and attested by his attorney.

In *Ireland* a consent for judgment, signed and attested in the same manner, is given to the plaintiff, but no consent for judgment containing a stay of execution can be filed without the consent of the plaintiff. 46 G. O. 1854.

The provisions as to the mode of discontinuing an action of ejectment, as to the proceedings in case of the death of all or any of the claimants or defendants, as to proceedings in error, and as to making a claimant in a second ejectment for the same premises find security for costs are the same in both countries.

2. *Ejectment for Forfeiture by Nonpayment of Rent.*

The proceedings at common law grounded on a forfeiture by non-payment of rent are the same in both countries.

In *England* the proceedings by statute are regulated by the C. L. P. Act, 1852, sects. 210–212, and the C. L. P. Act, 1860, sect. 1, and 3–11.

In *Ireland* the like proceedings are regulated by the I. C. L. P. Act, 1853, the I. C. L. P. Act, 1856, and the sections above enumerated of the Landlord and Tenant Law Amendment Act, 1860 (23 & 24 Vict. c. 154.)

In *England*, by sect. 210, C. L. P. Act, 1852, it is provided that in all cases between landlord and tenant, as often as it shall happen that *one half year's rent* shall be in arrear, and the landlord or lessor, to whom the same is due, *hath right by law to re-enter* for the non-payment thereof, such landlord or lessor shall and may, *without any formal demand or re-entry*, serve a writ in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action in ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements, or hereditaments comprised in such writ of ejectment; and such affixing shall be deemed legal service thereof, *which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry;* and in case of judgment against the defendant for non-appearance, if it shall be made appear to the Court where the said action is depending, by affidavit, or be proved upon the

l in case the defendant appears, that *half a* ***'s rent was due before the said writ was served,*** *that no sufficient distress was to be found on demised premises, countervailing the arrears due,* and *that the lessor had power to re-enter,* ı and in every such case the lessor shall ver judgment and execution as if the rent in ar had been legally demanded, and a re-entry e.

ı *Ireland,* by the L. & T. L. A. Act, 1860, 3, the relation of landlord and tenant shall deemed to be founded on the express or ied contract of the parties, and not upon *re* or service, and a reversion shall not be ssary to such relation, which shall be deemed ubsist in all cases in which there shall be greement by one party to hold land from or er another in consideration of any rent.

nd by sect. 48, all claims by any landlord ıst his tenant in respect of rent shall be ect to deduction or set off in respect of all debts due by the landlord to the tenant.

nd by sect. 52, whenever *a year's* rent shall ı arrear in respect of lands held under any fee , grant, lease, or other contract of tenancy, om year to year, and whether by writing or rwise, it shall be lawful for the landlord im- iately thereon *and before the expiration of the* if any, *limited for re-entry* thereupon in any or agreement, to proceed by ejectment for recovery of the possession of the said lands in of the Superior Courts of Law in Dublin, or e the rent shall not exceed 100*l.* by the , in the Court of the chairman of the county which the lands or any part thereof are ated; and the plaintiff's right to sue as such lord shall not be defeated by proof merely the legal estate in the rent or lands is vested ıy other person not a party to such suit or eedings, but who would be a trustee for the ıtiff, provided that the plaintiff was at the of the institution of such suit or other pro- ing the person substantially and beneficially led to the said rent.

nd by sect. 53, in any ejectment under this it shall *not be necessary to allege or prove* the ing of any demand or re-entry, or the *ence of any clause or condition of re-entry* in ease or other contract, or of any legal rever- expectant on the determination of the same, subsisting in the landlord, provided a tenancy een the parties shall appear to exist, whether original contract or by lawful assignment, se, bequest, or act and operation of law.

he differences between the law in force in two countries in reference to the cases in h an ejectment for non-payment of rent may rought may, therefore, be stated as follows:—

England.—1. The ejectment must be between dlord and tenant," and these words would it seems, include all the cases included by Irish Act.

One half-year's rent must be due when the is sued out.

There must be no sufficient distress to be d on the premises countervailing all the rs due.

The landlord or lessor to whom the arrears due must have a right by law to re-enter. can have no such right except by virtue of express condition or proviso for re-entry ained in the lease or agreement, or verbal g.

In *Ireland* the existence of the relation of landlord and tenant in point of tenure is not necessary, provided a tenancy between the parties shall appear to exist, whether by original contract or by lawful assignment, devise, bequest, or act and operation of law.

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2. A year's rent must be due after deducting all just debts due by the landlord to the tenant at the time when the writ is sued out.

3. The existence of a distress on the demised premises is immaterial with reference to the right to maintain the ejectment.

4. An original right of re-entry under the contract of tenancy is unnecessary, and its existence at the time of the commencement of the action in respect of the rent due is immaterial.

In *England* the form of the writ is the same as in ordinary ejectment.

Form of writ.

In *Ireland* the form is the same, but with the additional statement that the defendants hold the lands as tenants to the plaintiff under a lease at a yearly rent (specifying it), and that a certain sum (specifying it) for one year and upwards of such rent, ending on a certain day, is due to the plaintiffs.

In *Ireland,* by the L. & T. L. A. Act, 1860, s. 60, the writ of summons and plaint must contain or have indorsed thereon a statement of the amount of rent claimed to be due by the landlord after all just and fair allowances up to the time of bringing such ejectment, and the times at which such rent accrued due, and a notice that if the rent claimed, together with a sum for costs not exceeding 1*l.* 10*s.*, be paid to the plaintiff or his attorney or his known agent or receiver within 10 days from service all further proceedings will be stayed.

Indorsement on writ.

In *England* no such indorsement is required.

In *England* the service is effected as in ordinary cases, and if no tenant be in possession, then by affixing a copy (see sect. 210., C. L. P. Act, 1852, page 26).

Service of writ.

In *Ireland,* in addition to the modes of service applicable to the ordinary ejectment, it may be served on the clerk of the party at his dwelling-house, office, or place of business, such person being at least 16 years of age (L. & T. L. A. Act, 1860, sect. 56). And in case of vacant possession a copy of the writ must be posted on the usual place for posting notices in the nearest market town (*ib.* sec. 57). With the above additions the differences on this subject already mentioned in ordinary ejectments apply to ejectments for non-payment of rent, and the persons upon whom service must be effected, are in this class of ejectment much the same in both countries.

In *England* defence is taken by *appearance,* as in ordinary ejectments, and no notice is given to the plaintiff of the grounds of defence, which the defendant intends to rely upon at the trial.

Appearance and defence.

In *Ireland* defence is taken by *appearance and defence,* which must set forth the substantial grounds of defence, *e. g.,* whether the title of the plaintiff as landlord is disputed, or the fact of the rent being due, if in dispute; and if payment of the rent is relied upon the defence must be indorsed with the particulars of payment (I. C. L. P. Act, 1853, s. 198). The form of defence is given in Schedule B. to that Act. A defence to an ejectment for non-payment of rent must be a general defence; but in certain cases, *e. g.,* where the question is parcel or no parcel, on special

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Payment into court.

application to the Court a partial defence may be allowed, *ib.*, sect. 199.

In *Ireland*, by the L. & T. A. Act, 1860, sect. 62, the defendant in an ejectment for non-payment of rent may pay into Court, at any time before judgment or service of notice of trial, a sum for rent, with an undertaking to pay the costs when taxed, and, in case of non-payment, to suffer final judgment to be marked, or an attachment to be issued against him for the amount; and the plaintiff, if he does not accept this sum, must proceed to trial at his peril, and the defendant will obtain a verdict if no greater sum than that lodged was due for rent at the time of bringing the ejectment.

In *England* there is no corresponding provision, as there are no pleadings; but by sect. 212, C. L. P. Act, 1852, if the tenant at any time *before* the trial pays or tenders to the landlord or his attorney in that cause, or pays into the Court where the cause is pending, the rent and arrears, together with the costs, all further proceedings will be stayed. And as to relief *after* the trial, upon payment into Court, see *relief against forfeiture*, page 29.

Judgment by default.

The differences on this subject are the same as those which exist in ordinary ejectments, with the following additional differences.

In *England*, in case of judgment by default for non-appearance, the affidavit for an order to sign judgment must make it appear to the Court that half a year's rent was due before the writ was served, and that no sufficient distress was to be found on the premises countervailing the arrears then due, and that the lessor had power to re-enter. This affidavit is laid before a Judge, who, if satisfied with it, may direct judgment to be signed; and the order, together with a copy of the writ, is filed with the Master when judgment is signed.

In *Ireland*, the affidavit to entitle the plaintiff to sign judgment only states that the rent in arrear, over and above all just and fair allowances, amounts to one year's rent, and upon this being filed, together with an affidavit of the service of the writ of summons and plaint, judgment may be signed in the office as of course.

Proceedings at the trial.

There are some distinctions under this head which require notice.

Proof of lease.

In *Ireland* by the L. & T. L. A. Act, 1860, sect. 23, in all actions and proceedings, proof by or on behalf of any landlord of the perfection of the counterpart of any lease shall be equivalent to proof of the perfection of the original lease; and if it appears that no counterpart existed, or that the counterpart has been lost, destroyed, or mislaid, proof of a copy of the original lease or counterpart, as the case may be, shall be sufficient evidence of the contents of the lease as against the lessee or any person claiming from or under him.

Proof of title by receipt of rent.

In *Ireland*, by the L. & T. L. A. Act, 1860, sect. 24, in all actions, suits, and proceedings brought by or against any person claiming to be landlord otherwise than by original contract, after proof of the original lease or contract, it shall be sufficient *primâ facie* evidence of the title of such person as landlord, as to all parties in the said suit or proceeding, to prove that he has for one year at least, or that the person under whom immediately he derives his title has, for one year at least, and within three years before the transmission of such title, received the rent of the lands in respect of which such action, suit, or proceeding shall be brought, from a party in possession thereof.

In *England* there are no corresponding provisions. If the defendant appear, the plaintiff must prove the lease or agreement, in the ordinary manner, or, if there be no agreement in writing, the terms of the tenancy must be proved by parol evidence, and they must show an express stipulation for a right to re-enter and to determine the tenancy for non-payment of rent.

In *England*, in the event of the defendant not appearing at the trial, in order to work a forfeiture of the tenant's interest under the C. L. P. Act, 1852, sect. 210, the amount of rent due must be proved, as in case of appearance; and in no case can a verdict for the recovery of the specific rent be obtained in this action. But the landlord may prove and receive *mesne* profits, as stated below.

In *Ireland*, in the event of the defendant not appearing at the trial, the amount of rent so as to work a forfeiture, may be ascertained by affidavit as in case of judgment by default; and in all cases of a trial, a verdict may be given for the amount of the rent in arrear, upon which judgment may be signed and execution issue as in ordinary ejectments. I. C. L. P. Act, 1853 ss. 205–207.

In *England*, whenever it appears on the *trial* of any ejectment at the suit of a *landlord against a tenant*, that such tenant or his attorney has been *served with due notice of trial*, the Judge may whether the defendant appears or not upon such trial, permit the claimant on the trial, *after proof of his right to recover possession* of the whole or any part of the premises, to go into *evidence of the mesne profits thereof* from the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein; and the jury shall give their verdict both for the recovery of the premises, and for the damages to be paid for *mesne* profits; and judgment shall be not only for the recovery of possession and costs, but also for the *mesne* profits found by the jury, sec. 214, C. L. P. Act, 1852. Damages for *mesne* profits may be recovered under this section, although the writ and issue do *not* contain any claim in respect of them.

In *Ireland*, by the L. & T. L. A. Act, 1860 s. 77, in cases of ejectment for non-payment of rent, or for overholding premises, where the summons and plaint includes a claim for *mesne* profits, the plaintiff may, on proof of title, recover not only the *mesne* profits claimed in the writ but also the further *mesne* profits which might have accrued from the day to which the *mesne* profits have been calculated, or from the day from which the rent, for the non-payment of which the ejectment is brought, fell due, to the day of trial.

In addition to the differences on this subject which have been already noticed to exist in ordinary ejectments, and which apply to ejectment for non-payment of rent, we may notice that in *Ireland*, by the L. & T. L. A. Act, 1860, upon every writ of habere facias possessionem in an ejectment for non-payment of rent, there shall be a statement of the rent then due, and if at any time before execution executed, the defendant shall pay to the sheriff the sum so marked for rent and costs, such sheriff shall stay such execu-

n, and shall indorse on such writ as a return ereto, the receipt of such rent and costs.

In *England*, there is no corresponding pro- ion.

In *England*, as has already been shown, at any ne *before* the trial, proceedings can be stayed on yment, tender, or payment into Court by the *ant or his assignee* of the rent and arrears and sts. C. L. P. Act, 1852, sect. 212.

In *Ireland*, by the L. & T. L. A. Act, 1860, 34., the defendant in any ejectment for non- yment of rent in any of the Superior Courts, *or y other person having a specific interest in the se* or other contract of tenancy, *at any time fore the writ of habere facias possessionem shall executed*, may pay to the plaintiff, or his known ent or receiver, or to the attorney in the cause, the rent and arrears due at the time of the ser- e of the ejectment, together with the costs, or um sufficient to cover such costs, or to tender e same, and in case such tender shall be refused, lodge the money in Court, and thereupon the ourt or a Judge may order all further proceed- gs to be stayed and cease, upon payment of such sts incurred up to the date of such tender, as e Court or a Judge shall deem to be reasonable; d the money so lodged in Court shall be paid to e plaintiff or attorney on demand, and the defen- nt shall, notwithstanding any such payment, at liberty to have the costs taxed and paid ck, if disallowed, with the costs of the taxation, case more than one-sixth shall be disallowed.

The differences in the above proceedings are fficiently shown by the words in italics.

In *England* an important change has recently en made with respect to relief against forfeiture the C. L. P. Act 1860, s. 1.

Without setting out the sections of the former t at length, it will be sufficient to say that by t. 210 of the C. L. P. Act, 1852, in case the see, or his assignee, or other person claiming or riving under the lease, suffered judgment to be covered at the trial, and execution to be exe- ted, without paying the rent and arrears, gether with full costs, and without proceeding relief in equity within six months after such ecution executed, then the said lessee, assignee, d other persons claiming and deriving under the d lease, were barred and foreclosed from all ief or remedy in law or equity, other than by inging error for reversal of such judgment, d the said landlord or lessor held the premises charged from the lease; but by the same tion power is reserved to a mortgagee not in ssession, within six months after execution exe- ted, to pay all rent in arrear, and costs and nages, and perform all covenants, &c.

By sect. 211, C. L. P. Act, 1852, to entitle such see or person to relief, he had, within forty days xt after answer made by the claimant in such ctment, to bring into court, and lodge with the per officer such sum as the lessor or landlord his answer swore to be due and in arrear over d above all just allowances, and also the costs ed in the said suit, there to remain till the aring of the cause, or to be paid out to the sor or landlord on good security, subject to the ree of the Court.

But by the C. L. P. Act, 1860, s. 1, in the case any ejectment for a forfeiture brought for non- yment of rent, the Court or a Judge shall have wer, upon rule or summons, to give relief in a summary manner, but subject to appeal as therein-after mentioned, up to and within the like time after execution executed, and subject to the same terms and conditions in all respects, as to payment of the rent, costs, and otherwise, as in the Court of Chancery; and if the lessee, his executors, administrators, or assigns, shall, upon such procedure be relieved, he and they shall hold the demised lands according to the lease thereof made, without any new lease.

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An appeal lies from any such order of a Judge to the Court, and from the Court to a Court of Error (*ib.* sects. 4-11.)

In *Ireland* by the L. & T. L. A. Act, 1860, sect. 70, in case the defendant in any ejectment for nonpayment of rent, and the persons interested in the lease or other contract of tenancy, shall suffer a writ of habere facias possessionem to be executed, putting the landlord into possession of the premises, without paying the rent and arrears thereof, with full costs, or lodging the same in the Superior Court in which the ejectment was brought within six months after the execution of the said habere or writ of possession, and also making an application to be restored to the said possession to the Court out of which such writ shall have issued, or to a Judge thereof, within the said period of six months, or at the earliest opportunity after on which application can be reasonably made (and of which application the landlord shall receive due notice), in every such case, or in case the said Court or a Judge shall upon such application decline to make an order for restitution thereon, the said defendant, and all other persons interested in the lease or other contract of tenancy, shall be debarred from all relief or remedy in law or in equity, other than by bringing a writ of error to reverse such judgment of the Superior Court in case such judgment shall be erroneous, and the said landlord shall from thenceforth hold the demised premises discharged from such lease or tenancy; provided that nothing therein contained shall affect the right of redemption now by law reserved to any existing mortgagee claiming under a duly registered mortgage.

Mortgagees claiming under a duly registered mortgage in existence at the time of the passing of the Act are still allowed nine months to redeem. By sect. 71, the said Superior Court of Law in which any such judgment in ejectment for nonpayment of rent in favour of any landlord shall have been given and executed as aforesaid, or a Judge thereof, on the application of the defendant or any other person having a specific interest in the lease or other contract of tenancy, and made within the period aforesaid, and after such payment or lodgment of the rent, arrears, and costs as aforesaid, may hear and determine in a summary manner the claim of such defendant to be restored to the possession of the premises so recovered, and give such relief therein as a Court of Equity might have done, and award a writ of restitution, or refuse such application; provided that the order or decision of a single Judge in Chamber may be reversed or varied by the Court. In both countries, therefore, the relief which the Court of Chancery could give, may be given by the Courts of Law; but in *Ireland* there are no provisions for appealing to a Court of Error from the decision of the Court.

In *England*, moreover, by the C. L. P. Act, 1860, sect. 2, in the case of any ejectment for a

Relief against forfeiture

Common Law.

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for non-insuring against fire.

22 & 23 Vict. c. 35.

forfeiture for a breach of a covenant or condition to insure against loss or damage by fire, the Court or a Judge has power, upon rule or summons, to give relief in a summary manner, but subject to appeal as in the case of forfeiture for nonpayment of rent, in all cases in which such relief may be obtained in the Court of Chancery under the provisions of an Act passed in the Session of Parheld in the Twenty-second and Twenty-third years of the present reign, intituled *An Act to further amend the Law of Property, and to relieve Trustees*, and upon such terms as would be imposed in such Court.

And by sect. 3. of the same Act, it is provided that where such relief shall be granted, the Court or a Judge shall direct a minute thereof to be made by indorsement on the lease or otherwise.

In *Ireland* there are no corresponding enactments.

3. *Ejectment by Landlord upon the Termination of a Tenancy.*

The differences between the practice in the two countries with respect to this class of ejectments are the same as in ordinary ejectments, except in relation to the persons to be served and the mode of service, the evidence of the landlord's title, and of the lease, at the trial, and the time to which the *mesne* profits may be assessed, in which respects the differences are the same as in ejectment for nonpayment of rent. The only additional difference which requires to be noticed arises from the proceedings to compel the defendant to find bail for the costs and damages in the action.

Proceedings to compel the tenant to find bail.

In *England*, the proceedings in this case are regulated by the C. L. P. Act, 1852, sects. 213, 215, & 216.

In *Ireland* they are regulated by the L. & T. L. A. Act, 1860, sect. 75.

In *England*, the order made on this application is a rule to show cause within a time to be fixed for that purpose by the Judge.

In *Ireland*, the order is absolute in the first instance, and requires the defendant within six days to enter into recognizance.

In *England*, in the event of the action proceeding to trial, and verdict being found for the claimant, unless the Judge shall consider the verdict to be contrary to the evidence, or the damages excessive, he shall not, except by consent, stay judgment or execution, except upon condition that the defendant, within four days from the trial, shall find security, by the recognizance of himself and two sufficient sureties, not to commit any waste, or act in the nature of waste, or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) on the premises, and which may happen to be thereupon, from the day on which the verdict shall have been given to the day upon which execution shall finally be made on the judgment, or the same be set aside, as the case may be, C. L. P. Act, 1852, sect. 215. The mode of taking the recognizances and filing them is regulated by sect. 216.

In *Ireland* there are no corresponding provisions, but it is usually made a term of the order to stay execution, that if waste be committed, execution may issue on an affidavit being filed stating the fact.

4. *Ejectment by Landlord where Right of En accrues or Tenancy expires in or af Hilary or Trinity Terms.*

The provisions of the two statutes upon t subject are in effect the same.

In *England*, ejectments of this class are reg lated by the C. L. P. Act, 1852, sect. 217.

In *Ireland*, they are regulated by 1 & 2 W. c. 31., if this Statute be not constructively pealed by the I. C. L. P. Act, 1853, and L & T. L. A. Act, 1860.

5. *Ejectment by Mortgagee.*

In *England* the peculiar modes of procedure this case will be found stated in Mr. Hollan separate Statement. It is regulated by C. L. P. Act, 1852, sects. 219-220.

In *Ireland* there is no corresponding mode procedure, and ejectments of this class are co ducted in the same manner as ordinary eje ments.

6. *Action for Mesne Profits.*

Nothing further need be said under this he in addition to what has already been stated, c cept that in both countries it is *optional* with landlord to proceed under the powers given by Acts above mentioned, or, after the judgment ejectment, to bring an action of trespass for all mesne profits prior and subsequent to the verd

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We respectfully submit this our joint Sta ment to Her Majesty's Commissioners. We lieve that all the substantial and really import differences which exist between the practice procedure of the Superior Courts of Comm Law in England and Ireland, will be found sta therein. There are some minor differences matters of detail which we have omitted, as being of sufficient importance to justify th insertion in this Statement.

We also respectfully submit herewith separate Statements, containing very concise counts of the practice and procedure in Superior Courts of Common Law in Engl and Ireland respectively in civil actions.

The preparation of these separate Stateme though perhaps not strictly falling within instructions, was thought desirable as tending render our joint Statement more intelligible useful.

(Signed) Hewitt P. Jelle
H. T. Holland.

May 10, 1862.

SCHEDULE.

Writ where the Defendant resides within th Jurisdiction.

Victoria, by the grace of God, &c.

To *C.D.* of in the county of

We command you, that within eight days a the service of this writ on you, inclusive of day of such service, you do cause an appear to be entered for you in our Court of in an action at the suit of *A.B.*; and take no that in default of your so doing the said may proceed therein to judgment and execut Witness, &c.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within (*six*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

ndorsement to be made on the writ before service thereof.

his writ was issued by *E.F.* of
rney for the said plaintiff, *or* this writ was
ed in person by *A.B.*, who resides at
ntion the city, town or parish, and also the e of the hamlet, street, and number of the se of the plaintiff's residence, if any such].

ndorsement to be made on the writ after service thereof.

his writ was served by *X.Y.* on *L.M.* [the endant *or* one of the defendants], on *Monday* day of 18
(Signed) *X.Y.*

Summons and Plaint in Personal Actions.

Court of Queen's Bench,

Victoria, *&c.* *&c.*, to the said Richard Roe, greeting.

n James of West-oreland Street in e City of Dublin, rocer, Plaintiff.
hard Roe, of Mal-w, in the county of ork, Esquire, Exe-tor of Henry Roe, Defendant.
nty of the City of ublin.

Richard Roe, the defendant, is summoned to answer the complaint of John James, who complains, that the defendant is executor of Henry Roe, deceased, of Mallow, in the said county of Cork, and that, as such executor, is indebted to the plaintiff in the sum of 140*l.* account of goods sold and delivered by the intiff, to the said Henry Roe, of the value of 0*l.*, the particulars of which are endorsed reon [*or* annexed hereto].

And the plaintiff prays judgment against the d defendant to recover the said sum of 140*l.* nd interest thereon], and his costs of suit.

Therefore the defendant is hereby required to pear in the said Court, within twelve days er the service hereof, and answer the said mplaint, or in default thereof judgment shall be ven according to law.

Witness the Lord Chief Justice and other Justices of Her Majesty's Court of Queen's Bench, at Dublin.

Dated Monday the 20th day of January 1854.

WILLIAM THOMPSON,
Attorney for the Plaintiff,
No. 12, Clare Street, Dublin.

Indorsement of Particulars.

	£	s.	d.
n. 1, 1850.—By amount of goods furnished as per account furnished 1st December 1853 - - -	200	0	0
ec. 10, 1853.—By cash received on account - - - -	60	0	0
Balance due plaintiff -	£140	0	0

Appearance and Defence.

Court of Queen's Bench,
Saturday the 30th day of January 1854.

John James, Plaintiff.
Richard Roe, Executor of Henry Roe, Defendant.

The said Richard Roe appears and takes defence to the action of the said John James, and says that the goods sold and delivered to Henry Roe were of the value of 80*l.*, and no more; and that the said sum of 80*l.* has been paid by the defendant to the plaintiff, and is sufficient to satisfy the plaintiff's demand, and therefore he defends the action.

EDWARD MOLONY,
Attorney for the defendant,
No. 14, Capel Street, Dublin.

Indorsement of Particulars of Payment.

	£
Aug. 1, 1851.—By cash paid plaintiff by the defendant -	45
,, By defendant's acceptance, dated at three months	35
	£80

Abstract for Nisi Prius.

Court of Queen's Bench,
Monday, the 20th day of March, A.D. 1854.

County of Sligo, to wit.
John James, Plaintiff.
Richard Roe, Defendant.

Whereas John James, the plaintiff, has sued Richard Roe, the defendant, and demanded the sum of 150*l.* as the price and value of 130 barrels of wheat sold and delivered to the defendant;

And the said Richard Roe has taken defence, and admits the delivery of the wheat, but has alleged that he paid the sum of 130*l.* to the plaintiff before the commencement of this action, and that such payment was a full satisfaction of the value of said wheat, and that said wheat was not sound and merchantable at the time of its delivery to the plaintiff:

Therefore let the jury try—

1st. Whether the said wheat was sound and merchantable at the time of its delivery.

2d. Whether the value of said wheat exceeded the sum of 130*l.*

ROBERT JONES,
Attorney for Plaintiff.
HENRY GREEN,
Attorney for Defendant.

Form of Writ of Revivor.

VICTORIA, by the grace of God, *&c.*, to *E.F.* of greeting.

We command you, That, within eight days after the service of this writ upon you, inclusive of the day of such service, you appear in our Court of to show cause why *A.B.* [*or C.D.*, as executor of the last will and testament of the said *A.B.* deceased, *or as the case may be*,] should not have execution against you [*if against a representative, here insert*, as executor of the last will and testament of deceased, *or as the case may be*] of a judgment whereby the said *A.B.* [*or as the case may be*] on the day of in the said Court recovered against you [*or as the case may be*] £ ; and take notice, that in default of your so doing the said *A.B.* [*or as the case may be*] may proceed to execution.

Witness, *&c.*

COMMON LAW.

Joint Statement of Messrs. Jellett and Holland.

3. Form of appearance and defence in Ireland.

4. Form of abstract and issues in Ireland.

5. Form of writ of revivor in England.

COMMON LAW.

Joint Statement of Messrs. Jellett and Holland.

6. Form of writ of revivor in Ireland.

Form of Writ of Revivor.

In the Queen's Bench.

Victoria, *&c., &c.* to the said Richard Roe, greeting.

County of Clare. John James, Plaintiff. Richard Roe, Defendant.

Richard Roe, the defendant, is summoned to appear and show cause wherefore Edward Jones, executor of the said John James, shall not* have execution against the said Richard Roe, of a judgment whereby John James, on the 1st day of June 1850, in the said Court of Queen's Bench, recovered against the said Richard Roe the sum of 300*l.*, and of which sum the said Edward Jones alleges that there remains due and unsatisfied the sum of 100*l.*

Therefore the said Richard Roe is hereby required to appear in the said Court within eight days after the service hereof, and show cause wherefore execution should not be had accordingly; or in default thereof the said Edward Jones may proceed to execution for said sum of 100*l.* and his costs.

Witness the Lord Chief Justice and other Justices of Her Majesty's Court of Queen's Bench at Dublin.

Dated, Monday, the 26th day of April 1854.

WILLIAM THOMPSON, attorney for the said Edward Jones, No. 12, Clare Street, Dublin.

Like in case of Interlocutory Judgment.

[*Proceed as in last form to the asterish,* and then as follows:*]—assess and recover [*or* recover] the damages in respect of a judgment whereby the said John James, on the 1st day of June 1850, in the said Court of Queen's Bench, was adjudged in that behalf entitled, and which inquiry of damages as yet remains to be made [*if the case be so*].

Therefore the said Richard Roe is hereby required to appear in the said Court within eight days after the service hereof, and show cause wherefore the said assessment should not be made [*if not made*] and recovery had as aforesaid, or in default thereof the said Edward Jones may proceed to assess and recover [*or* to recover] such damages against the said *C.D.*

Witness, the Lord Chief Justice and other Justices of Her Majesty's Court of Queen's Bench at Dublin.

Dated, Monday, the 4th day of April 1854.

WM. THOMPSON, attorney for the said *E.F.*, No. 12, Clare Street, Dublin.

EJECTMENT.

Form of Writ.

7. Form of writ in England.

Victoria, &c., to *X. Y. Z.*, and all persons entitled to defend the possession of [*describe the property with reasonable certainty*] in the parish of in the county of to the possession whereof *A.*, *B.*, and *C.*, some or one of them, claim to be [*or* to have been on and since the day of A.D.] entitled, and to eject all other persons therefrom; these are to will and command you, or such of you as deny the alleged title, within sixteen days after service hereof, to appear in our Court of to defend the said property, or such part thereof as you may be advised; in default whereof judgment may be signed, and you turned out of possession.

Witness, &c.

Summons and Plaint in Ejectment.

Court of Queen's Bench.

Victoria, *&c., &c.* to the said *G.H.* and *I.K.* and all persons concerned, greeting.

A.B., C.D., and E.F., Plaintiffs. G.H. and others, Defendants. County of Leitrim.

G.H. and *I.K.*, the defendants, have been summoned to answer the complaint of *A.B.*, *C.D.*, and *E.F.*, the plaintiffs, who complain that* the plaintiffs, or some or one of them, on the 1st day of July 1853, became and were and are still entitled to the quiet and peaceable possession of the lands of Blackacre, in the county of Leitrim, and the defendant wrongfully assumed the possession thereof, and still withholds the same from the plaintiffs.

And therefore the plaintiffs pray judgment against the said defendants to recover the possession of said lands or premises; [*and in case of ejectment on the title where the plaintiff's seek to recover mesne rates, add* and compensation in damages for the loss of the mesne rates and profits of the said premises while the possession thereof was withheld from the said plaintiffs, to the amount of £] Therefore [*&c. &c., as in Form* 1.]

In case of ejectment for nonpayment of rent copy last form to the asterisk (*), *and then say*, that the defendant holds the lands of Blackacre, in the county of Leitrim, as tenant to the plaintiff under a lease, at the yearly rent of 50*l.*, and that the sum of 80*l.*, being for one year and upwards of such rent, due and ending on the 1st day of January 1854, is due to the plaintiffs. And therefore [*&c. &c., as in last Form*].

Indorsement of Particulars of Rent due on Ejectment for Nonpayment of Rent.

	£	s.
1st Jan. 1853.—By balance year's rent, due on this day - - -	30	0
1st Jan. 1854.—By one year's rent due	50	0
	£80	0

Abstract for Nisi Prius.

In the Queen's Bench,

Monday, the 26th day of June 185

County of Wicklow, to wit. John James, Plaintiff, Richard Roe, Defendant.

Whereas John James, the plaintiff, has sued Richard Roe the defendant, for the recovery of the possession of the lands of Blackacre, claiming title therefrom the 20th day of January 1850; and the said Richard Roe has taken defence for the whole of the land mentioned in the summons and plaint: Therefore let the jury try whether the plaintiff was entitled to the possession of the said lands, or any part of them, on the said day, or at any time subsequent to such day, and before the commencement of the action, and whether the plaintiff is entitled to any and what damages for loss of mesne rates and profits.

I.—2. Mr. JELLETT'S STATEMENT on the PRACTICE and PROCEDURE of the COURTS of COMMON LAW in IRELAND.

Statement of Mr. Jellett as to Ireland.

The following Statement contains only a very concise statement of the different steps in an action commenced in one of the Superior Courts at Dublin, with the view of rendering more intelligible the joint Statement of Messrs. Jellett and Holland of the differences in the Practice and Procedure of the Superior Courts in England and Ireland respectively.

Actions brought in the Superior Courts of Law in Ireland are of three classes, real, mixed, and personal. Real and mixed actions have, since the passing of the Act 3 & 4 Will. 4. c. 27., been reduced to four, writ of right of dower, dower, quare impedit, and ejectment. The two former are practically unknown in Ireland. Proceedings in quare impedit are conducted in the same manner as they were in England previous to the General Rules of Hilary Term, 4 Will. 4.

The proceedings in actions of ejectment are regulated by the Irish Common Law Procedure Act, 1853, and the Irish Common Law Procedure Act, 1856, and also by the Act 23 & 24 Vict. c. 154., commonly called "The Landlord "and Tenant Amendment Act (Ireland), 1860.

The proceedings in all personal actions brought in the Superior Courts in Ireland are now regulated by provisions of the Irish Common Law Procedure Act, 1853 (16 & 17 Vict. c. 113.), and the Irish Common Law Procedure Act, 1856 (19 & 20 Vict. c. 113.)

The former of these statutes abolishes the special forms of personal actions formerly used, such as assumpsit, account, debt, covenant, detinue, trespass, trespass on the case, trover or replevin, and substitutes in lieu thereof a general form of "personal action," whereby the right to recover any debt or damages or personal chattel, in respect of any matter of contract or of tort, or taking or detention, which might have been theretofore the subject of any of such special forms of action, may be enforced. Whenever the term "personal action" is used in the following statement, it refers to actions of this class as distinguished both from real actions and actions of ejectment.

The class of personal actions constitutes by far the most extensive class of actions cognizable in the Superior Courts in Ireland.

PERSONAL ACTIONS.

It is not deemed necessary to state in detail the periods of limitations applicable to the bringing of different classes of personal actions. The provisions on this subject are the same in England and in Ireland.

There are also special periods of limitation applicable to the bringing of qui tam actions, actions against persons for acts done in the execution of statutory powers, or in the discharge of a public duty, or by virtue of some public statute creating, for the first time, the right of action; but it would be impossible in a statement like the present to notice these cases in detail.

There are many cases in which notice of action must be given to the defendant before the service of the writ. This privilege is always given by statute, and is generally conferred for the benefit of persons acting in the supposed execution of some public duty. The notice must be given one calendar month before the commencement of the action.

Notice of action.

5 & 6 Vict. c. 97. s. 4.

WRITS of SUMMONS and PLAINT.

All personal actions, whether brought by or against any person "entitled to the privilege of "peerage or Parliament, or of the Court in which "the action is brought, or of any other Court, "or to any other privilege, or by or against any "corporation or incorporated body or company, "or by or against any other person," must be commenced by issuing a writ of summons and plaint, which is a judicial writ authenticated by the common seal of the Superior Courts, and bears the date of the day on which it is sealed.

Writ of summons and plaint a combination of writ of summons and declaration.

The writ of summons and plaint in use in Ireland is, in fact, a combination of the writ summons by which a personal action is commenced in England, and of the declaration, and serves at once as the process by which the defendant is brought into Court and the statement by the plaintiff of the subject matter of complaint.

Forms of writs of summons and plaint.

There are three forms of writs of summons and plaint in personal actions:—(1) The ordinary writ of summons and plaint complaining of a breach of duty or contract by the defendant, and claiming damages in respect of it; (2) A writ of summons and plaint claiming a mandamus or order to compel the fulfilment of a duty or contract, or claiming an injunction against the repetition of some breach of duty or contract in which the plaintiff is interested; and (3) a writ of summons and plaint brought under the summary procedure upon bills of exchange under the Act 24 & 25 Vict. c. 43.

The form of the writ of summons and plaint in all these cases is substantially the same, with the additions which shall be hereafter noticed, in cases falling under the second and third classes. The writ of summons and plaint in all personal actions must contain the names and residences of the plaintiff and the defendant, with such designation or description of the parties respectively as the plaintiff or his attorney may be able to give, and a statement of the character in which each party sues or is sued. It is usually in the following form:—

Court of Queen's Bench.

John James, of Westmoreland Street, in the city of Dublin, grocer,
Plaintiff;

Richard Roe, of Mallow, in the county of Cork, Esq., executor of Henry Roe,
Defendant.

County of the City of Dublin.

Victoria, &c. to the said Richard Roe, greeting: Richard Roe, the defendant, is summoned to answer the complaint of John James, who complains that the defendant is executor of Henry Roe, deceased, and

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that as such executor he is indebted to the plaintiff in the sum of 140*l.* for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the said Henry Roe, the particulars of which are endorsed hereon [or annexed hereto].

And the plaintiff prays judgment against the said defendant as such executor, to recover the said sum of 140*l.* and his costs of suit.

Therefore the defendant is hereby required to appear in the said Court within twelve days after the service hereof, and answer the said complaint, or in default thereof judgment shall be given according to law.

Witness, the Lord Chief Justice and other Justices of Her Majesty's Court of Queen's Bench at Dublin.

Dated Wednesday, the 1st day of January, 1862.

William Thompson, Attorney for the Plaintiff, No. 12, Clare-street, Dublin.

Venue.

The venue is inserted in the margin of the writ of summons and plaint below the names and descriptions of the parties. The venue in all personal actions is transitory, and may be laid in any county; but, as will be seen hereafter, the venue may be changed by the Court or a Judge upon motion, if it be shown that the case can be more conveniently tried in another place.

Joinder of causes of action.

The writ of summons and plaint in a personal action contains a statement, in different counts, of the different causes of action in respect of which the plaintiff seeks redress; and the plaintiff may unite in the same writ of summons and plaint any causes of complaint which formed the subject of a personal action, provided they are brought by or against the same parties in the same right. The Court or a Judge has, however, the same power of preventing different causes of action from being tried in the same record, if such course is considered inexpedient, as the Court or a Judge in England possesses under the same circumstances.

Several counts.

A plaintiff in Ireland is not in any manner restricted as to the number of counts which may be inserted in the writ of summons and plaint upon the same cause of action; and he may insert, *as of course*, as many counts as he pleases upon the same matter of complaint.

Non-joinder or mis-joinder of parties.

The action should be brought in the name of the person in whom the legal right of suit is vested; but the Court or a Judge, at the trial, has the power, as will be hereafter seen, to amend the writ in cases of non-joinder or mis-joinder of parties, as plaintiffs or defendants. If, however, a mis-joinder of plaintiffs appear upon the face of writ of summons and plaint, the better opinion seems to be that it still constitutes a fatal objection, and that the writ, under these circumstances, would be held bad on demurrer. It is right, however, to observe, that this question has not received a judicial decision.

Endorsements on writ in cases of liquidated or money demands.

The particulars of the plaintiff's demand, where it is a liquidated or money demand, and of all credits to which the defendant may be entitled, and of the balance (if any) claimed by the plaintiff, must be endorsed on or annexed to the writ of summons and plaint, and on the copies intended for service, unless a detailed statement have been furnished to the defendant previously; in which case it is sufficient to refer to such statement, and to mention the balance claimed to be due on foot of it, and the exact sum claimed to be due, should be stated in the prayer for judgment at the end of the writ. The writ must be endorsed with the following notices: — (1) "If the amount "sought to be recovered by the within summons "and plaint, exclusive of costs, shall be settled "with the plaintiff or his attorney within six "days from the service hereof, the costs payable "by the defendant shall be as follows in the "respective cases under-mentioned:—

	£	s.	d.
"If settled by a payment of 20*l.* "or upwards - - -	2	10	0
"If settled by a payment of under "20*l.* and above 5*l.* - -	1	5	0
"If settled by a payment of 5*l.* "or less - - -	0	12	6"

(2) "This writ is to be served within six calendar "months from the date thereof, including the day "of such date and not afterwards. [And if the "amount within claimed and £ for costs be "paid to the plaintiff or his attorney within six "days from the service thereof further pro-"ceedings will be stayed.]"

The latter notice, excluding the portion within brackets, must be endorsed on all writs of summons and plaint.

Where the plaintiff in any action is a lunatic or minor, before the filing of the summons and plaint as a pleading, a consent in writing signed by some fit and proper person to act as next friend to such minor or lunatic, together with an affidavit verifying the signature of such person, must be lodged in the office of the Clerk of the Rules; and a rule is thereupon entered, enabling such person to sue as next friend for such minor or lunatic, and the name of such person is inserted in the writ of summons and plaint as next friend to the minor or lunatic.

The second form of writ is that claiming a mandamus or injunction, in which cases the writ must, in addition to the notices above-mentioned, be endorsed with a notice that a writ of injunction or mandamus will be applied for.

The third form of writ is that given by the "Summary Procedure on Bills of Exchange" (24 & 25 Vict. c. 43.) The writ of summons and plaint in this case is in the ordinary form, but contains at the commencement a notice in the form prescribed by that Act, calling on the defendant within twelve days from service to obtain liberty to appear and to file an appearance and defence accordingly. If no appearance and defence be filed, judgment may be marked in the usual way, as in other cases of liquidated demands. Leave to appear and defend may, however, be obtained by an application to a Judge, supported by an affidavit of merits, or by lodging the amount claimed in Court.

All writs of summons and plaint must be on parchment, and when engrossed are entered by the Clerk of the Writs in a book provided for that purpose, and appropriated by him to the several Superior Courts of Law in rotation, by batches of twenty-five—first to the Court of Queen's Bench, next to the Common Pleas, and lastly to the Exchequer, and so on in continuous rotation. Upon the writ being appropriated by the Clerk of the Writs in this manner, it is sealed with the common seal of the Courts of law, and stamped with the name of the particular Court to which it is assigned, and all subsequent proceedings in the action are carried on and become the business of such Court and its Officers. At the time of issuing the writ a docket, signed by the plaintiff's attorney, is lodged with the officer stating the names of the parties and the characte

in which they sue and are sued, the nature of the action, the venue, and the amount claimed for debt or damages; and the officer thereupon enters these particulars in a book kept for that purpose.

Concurrent or duplicate writs may be issued on the application of the plaintiff or his attorney, but the cost of them will not be allowed on taxation against the defendant unless the Taxing Master is satisfied that the circumstances of the case justified their being issued.

The writ, when thus issued, remains in force for the purpose of service for six months, but it may be renewed from time to time during the currency of the subsisting writ, for the purpose of service.

Such renewed writs, however, will not avail to prevent the operation of the Statute of Limitations, unless issued by the leave of the Court, grounded on an affidavit showing a sufficient excuse for the original writ not being served.

The summons and plaint is required in all cases to set forth the real nature of the complaint in a succinct form, and no technical language is necessary. It is sufficient to state a cause of action good in substance; immaterial statements are dispensed with, and special demurrers abolished, and forms of writs are given in Schedule (C.) to the Act, to illustrate the style of pleading.

No writ of summons and plaint is invalid on account of any verbal or technical error or omission in it, or in any endorsement thereon; and the Courts, or a Judge, will decide what is a technical error or omission, and will authorize the amendment of the writ, or set it aside as irregular; but all errors or omissions which have not a manifest tendency to mislead the opposite party, are deemed merely verbal or technical. If the writ is framed so as to prejudice, embarrass, or delay the fair trial of the action, the Court or Judge will, upon motion, set aside or amend the writ.

Service of the Writ of Summons and Plaint.

The writ of summons and plaint being thus issued, service of it may be effected in the following ways:—

First.—Personal service within the jurisdiction of the Court, which is effected by delivering to the defendant a true copy of the writ, and at the same time exhibiting to him the original.

Secondly.—Where the defendant is *personally resident* within the jurisdiction, and reasonable diligence has been used in endeavouring to effect personal service, but without effect, service of the writ may be effected by leaving a copy of it at the defendant's house or place of residence; or at his office, warehouse, counting house, shop, factory, or place of business, with the wife, child, father, mother, brother, or sister of the defendant; or with the servant or clerk of the defendant, the person with whom such copy is left being of the age of 16 years or upwards, and showing to such person the original or duplicate original of such summons and plaint.

In either of the foregoing classes of cases the officer of the Court will act upon an affidavit showing that the terms of the statute have been complied with, and service of the writ effected, in either of the foregoing ways; and no application to the Court or a Judge is necessary in order to render the service complete.

Thirdly.—If the defendant is *resident within the jurisdiction*, and service cannot be effected in either of the modes last pointed out, the Court upon being satisfied by affidavit that the defendant is keeping out of the way to evade service, may order service to be effected through the Post Office, or in any other manner they may think proper.

Fourthly.—If the cause of action stated in the writ of summons and plaint has arisen within the jurisdiction of the Court, and the defendant is *resident out of the jurisdiction*, and has some manager of his real or personal estate resident in Ireland, the Court may authorize service to be substituted by serving such agent or manager, and transmitting a letter through the Post, addressed to the defendant, accompanied by a copy of the order.

No special endorsement is required to be made upon the writ of summons and plaint in any of these cases in order to entitle the plaintiff to judgment in the action. In the third of the foregoing class of cases, a motion is made as of course, and an absolute order pronounced in the first instance. In the fourth class a conditional order only is obtained in the first instance, and a time is fixed by the order for showing cause against it, which of course varies with the circumstances of each case, and is regulated by the place of residence of the defendant, and the time which will necessarily be occupied in communicating with him. If no cause be shown against the conditional order within the time limited for that purpose, the order is made absolute without any further motion to the Court, and the time for filing an appearance and defence is computed from the date of the order being thus made absolute.

Interrogatories may by the leave of the Court or a Judge, be delivered with the writ of summons and plaint, for the purpose of obtaining discovery from the defendant on some point material to the plaintiff's case. The practice on this subject is the same in England and Ireland.

Defences.

The mode of taking defence to the writ of summons and plaint, is by filing an appearance and defence to the action in the office of the Pleadings Assistant. As the writ of summons and plaint serves the double purpose of a writ of summons and a declaration, so the appearance and defence serves the purpose of an appearance and plea.

Defences in fact may be either (1) In bar to the action, that is, where they rely upon facts showing that the plaintiff had not at the commencement of the suit a valid cause of action; or, (2), Defences to the further maintenance of the suit, where they rely upon some circumstance which has occurred since the commencement of the action, as a reason why it should not be further prosecuted; or, (3), Defences in the nature of pleas in abatement; or, (4), Equitable defences. The form of an ordinary appearance and defence in bar to the action is as follows:—

Court of Queen's Bench.

Saturday the 18th day of January 1862.

John James, *Plaintiff;*
Richard Roe, executor of Henry Roe, *Defendant.*

The said Richard Roe, as executor of Henry Roe, appears and takes defence to the action of the said John James, and says that the goods sold and de-

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Substitution of service on a defendant residing within the jurisdiction.

Substitution of service on a defendant resident out of the jurisdiction.

Practice in motions for substitution of service.

Interrogatories.

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livered to the said Henry Roe, were of the value of 80*l.*, and no more; and that before action brought, he, as such executor, satisfied and discharged the said sum by payment thereof, at the time and in the manner herein endorsed, and therefore he defends the action.

Attorney for the Defendant,
No. ——— street, Dublin.

ENDORSEMENT of PARTICULARS of PAYMENT.

I. August 9, 1861:

	£	s.	d.
By cash paid to the plaintiff by the defendant - - -	45	0	0
By the defendant's acceptance at three months - - -	35	0	0
	80	0	0

Time for filing an appearance and defence.

In order to enforce an appearance and defence, the plaintiff must file, within eight days from the service of the writ, in the office of the Pleadings Assistant, the original or a duplicate writ of summons and plaint, or a copy of it, certified by his attorney to be a correct copy; and if this be done, the time allowed to the defendant to file his appearance and defence to the writ is twelve clear days from the date of service, exclusive of holidays. If the writ of summons and plaint be not filed within eight days from the day of service, notice must be given to the defendant of the filing of the writ, and he is then allowed eight days from the service of this notice to file his appearance and defence.

Rule to plead not necessary.

No requisition to plead is necessary in any of these cases, beyond what is contained in the writ of summons and plaint itself, nor is there any distinction, in the time allowed for filing an appearance and defence, between defences in the nature of pleas in bar, and defences in the nature of pleas in abatement, in cases in which the latter may be filed without the leave of the Court.

Non pros. for not filing writ.

If the writ of summons and plaint, or a duplicate or copy, be not filed within two months from the date of the service, unless the time for doing so has been extended by a special order of the Court, the defendant may, on an affidavit of the service of the writ of summons and plaint, and a certificate stating that it has not been filed, enter a rule that the plaintiff do file his writ of summons and plaint in four days, or pay to the defendant his costs occasioned by such service, according to a scale fixed by the Taxing Masters, and this order has the effect of a judgment of *non pros.*

Appearance and defence to contain residence of attorney or defendant.

The appearance and defence must contain at the foot of it the name and registered residence of the defendant's attorney, when defence is taken by attorney; and when defence is taken in person, the residence of the defendant, which must, for the purposes of the defence, be a specified house in the city of Dublin, at which all notices intended for the defendant may be left. Notice of the filing of the defence, together with a copy of it, must be served on the plaintiff's attorney, or the plaintiff, if he appears in person, on the day upon which it is filed.

If the defendant be a minor or lunatic, the same proceedings must be taken to appoint a guardian to defend on his behalf, as should be adopted in the case of a plaintiff suing under similar circumstances.

Time to plead after amendment.

Where an amendment of a writ of summons and plaint is allowed, the defendant must, unless an order to the contrary has been made by the Court, plead to the amended pleading within the time mentioned in the original pleading, or within two days after notice of the amendment, whichever last expires; and in the event of the defendant not pleading anew within the time specified, the defence originally pleaded is considered as his defence to the summons and plaint, as so amended.

The form of defence formerly known as the general issue, under which almost every defence could be relied upon, has been abolished in Ireland, and every defence now, whether the action be in tort or contract, must state specially all the facts which constitute the defence in ordinary language and without repetition, and as concisely as is possible consistently with clearness; all averments contained in the writ of summons and plaint, and not denied in the defence, are deemed to be conclusively admitted for the purposes of the action. If the defence is applicable only to a portion of the preceding pleading, the portion to which it is applicable should be shortly referred to; otherwise it will be read as applicable to the whole of the preceding pleading.

Defences of payment and set off are not construed *distributively*, and the portion of the plaintiff's demand, to which they are pleaded, must be stated, and a payment or set off coextensive with that portion must be proved.

Although the plaintiff, as has been already stated, may at his pleasure insert in the writ of summons and plaint, any number of different counts grounded upon the *same* cause of action as well as causes of action of a different nature and kind; the defendant, except in the cases which shall be presently mentioned, is not permitted, without the order of the Court, to plead more than one defence to each cause of action.

The following defences, however, or any two or more of them, may be pleaded together as of course, without leave of the Court or a Judge; that is to say, a defence denying any contract or debt alleged in the writ of summons and plaint, a defence of tender as to part, a defence of the Statute of Limitations, set off, bankruptcy of the defendant, discharge under the Insolvent Acts, plene administravit, plene administravit præter, infancy, coverture, payment, accord and satisfaction, release, a denial that the property an injury to which is complained of is the plaintiff's, leave and licence, son assault demesne, or any other defences which eight of the Judges of the Superior Courts, three of whom must be the Chief Judges, may authorize by a general order. No order has been made under this section extending the defences which the defendant may plead as of course, and they are still confined to those mentioned in this section.

Besides the defences above mentioned, and which the defendant may plead as of course, he may also, by the leave of the Court or a Judge, plead additional defences. An order for this purpose is obtained by a motion of course, grounded upon the affidavit of the defendant or his attorney, stating that he is advised and believes that he has just ground to traverse the several matters sought to be traversed by his proposed defences; and that the several matters thus sought to be pleaded in confession and avoidance, are true in substance and in fact; a certificate of counsel is also usually required, to the effect that he deems the pleadings to be proper and necessary. If the defendant plead double defences, which he is not

entitled to do, without leave of the Court or a Judge, the opposite party may sign judgment.

If the writ of summons and plaint, or any count of it, discloses no cause of action good in substance, the defendant should file an appearance and defence in the nature of a demurrer.

The defendant may also, by permission of the Court or a Judge, plead and demur to the writ of summons and plaint. The practice of the Courts as to the mode of obtaining an order for this purpose differs; the Court of Queen's Bench requiring a notice of a motion for this purpose to be served, while, according to the practice of the Courts of Common Pleas and Exchequer, it is obtained by motion of course. In every case the application ought to be supported by the affidavit of the attorney for the party applying, to the effect that he is advised and believes that all the objections raised by the demurrer are valid objections in law, and the Court or Judge may direct whether the issues of fact or law shall be first disposed of.

2. Defences arising after the commencement of the action, and pleaded in bar to the further maintenance of the suit, must be expressed to be so pleaded. The most common defence of this class is a defence of payment of money into Court, which must in all cases be specially pleaded. Money may be paid into Court in discharge of the claim for debt or damages in all personal actions, except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, and seduction. In actions upon money bonds in penalties for securing the payment of a lesser sum, or the performance of some collateral condition, no sum less than the penalty can be paid into Court; and in actions of detinue, claiming both a redelivery of some chattel and damages for its detention, it seems to be doubtful how far money can be paid into Court. The defendant is not allowed to plead any other defence to that part of the writ of summons and plaint to which the defence of payment into Court applies.

3. Defences in the nature of pleas of abatement must generally be verified by the affidavit of the defendant or his attorney, and the affidavit annexed to the defences. The same time is allowed for filing them as for filing other defences. Defences relying upon the non-joinder of a plaintiff or defendant cannot be pleaded without the permission of the Court.

4. Equitable defences are permitted to be pleaded in cases in which a Court of Equity would grant an absolute and unconditional injunction to restrain the action. They must be headed by the words, "For defence on equitable "grounds." A single equitable defence may be pleaded as of course. If joined with other defences, the leave of the Court or a Judge must be obtained for that purpose in the manner above mentioned.

When the defence is filed, a copy of the defence certified as correct must be served on the plaintiff's attorney, accompanied by a notice of its having been filed. The future course to be adopted by the plaintiff after the defence has been filed will depend upon the nature of the defence. If the defence be so framed that it is impossible with safety either to take issue upon it or demur, or is otherwise so framed as to prejudice, embarrass, or delay the fair trial of the action, the plaintiff may apply by motion on notice to set aside the defence, or compel the defendant to amend it in the particulars complained of. If, on the other hand, the defence be bad in substance, the plaintiff should file a demurrer to the defence, and serve a notice of its being filed and a copy of it in the same manner as has been before described in case of a demurrer to the writ of summons and plaint. If the defences, or some of them, require to be answered by a further pleading on the part of the plaintiff, he must file a replication for that purpose.

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No replication or other pleading subsequent to the defence (except in the case of a replication to a defence of set-off, in which case a single replication may be filed as of course) is permitted to be filed without an order of the Court obtained upon motion, which, in the Court of Queen's Bench, must be upon notice, and in the Courts of Common Pleas and Exchequer may be moved as of course; and the plaintiff may, upon this application, obtain liberty both to take issue by means of a replication to the defence and to demur to the defence as being insufficient in law. If the replication requires to be answered by some further pleading on the part of the defendant, he may, in like manner, apply by motion for liberty to rejoin. But there is no power, either by leave of the Court or otherwise, to rejoin in fact and demur to the plaintiff's replication. The right of either party to plead and demur to the previous pleading of his opponent does not appear to extend beyond the replication.

Replications and subsequent pleadings.

No power to rejoin and demur.

TRIAL OF ISSUES OF FACT.

There are three modes in which issues of fact may be tried:—

1. By record, when the issue is as to the existence or non-existence of a particular record. This issue arises when a defence of *nul tiel* record is pleaded. Where this defence has been pleaded, either party may, as of course, enter a rule that a certain day be fixed for the inspection of the record, upon which day the officer of the Court in whose custody the record is attends the Court sitting in Banc, when the record is inspected and judgment given accordingly. To prevent frivolous pleas of *nul tiel* record, the party pleading this defence must furnish a statement to his opponent, signed by counsel, of the points on which he intends to rely, and in order to prevent this defence from being unnecessarily resorted to, the party relying upon any judgment must state the date of the judgment and the number of the roll on which it is entered.

Trial by record.

2. Trial by jury. The first step taken by the defendant is to make up the abstract of issues. This is effected in the following manner:—After the filing of the last pleading, and either before or with the notice of trial, the plaintiff serves the defendant with a draft abstract of issues for Nisi Prius. This is a transcript of the various pleadings in the action, followed by the issues which the plaintiff proposes shall be tried upon them, and is usually in the following form:—

Trial by jury.

Abstract of issues.

Court of Queen's Bench.

Monday, the day of , A.D. 1862.

County of the City of Dublin.

John James, *Plaintiff;*

Richard Roe, *Defendant.*

Whereas John James, the plaintiff, has sued Richard Roe, the defendant, as executor of Henry Roe, and demanded the sum

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of 140*l.*, for goods sold and delivered by the plaintiff to the said Henry Roe.

And the said Richard Roe has taken defence, and alleged that the goods sold and delivered were of the value of 80*l.* and no more; and that before action brought, he as such executor satisfied and discharged the said sum by payment thereof, at the time and in the manner on the defence endorsed. Therefore, let the jury try—

1st.—Whether the value of the said goods exceeded the sum of 80*l.*

2nd.—Whether the defendant before action paid to the plaintiff the said sum of 80*l.* as alleged.

Abstract of issues, when served.

This abstract may be served at any time after the last pleading has been filed, but cannot be served later than with the notice of trial. The abstract of issues must be returned, altered or approved of, within four days from service. If the abstract of issues be amended on the part of the defendant, and the plaintiff approves of the amendments, the abstract of issues, as so amended, stands as the abstract for Nisi Prius in the cause. If, on the other hand, the plaintiff does not approve of the amendments made by the defendant, he issues a summons to settle the issues before a Judge, who, having heard the counsel on both sides, settles the abstract of issues accordingly. If either party is dissatisfied with the ruling of the Judge, he may appeal to the Court in Banc, but there is no further appeal; and in country causes the appeal from an order of a Judge on settlement of issues can rarely, if ever, be heard until after the trial has taken place.

Trial by a Judge without Jury.

3. The parties may, by consent in writing, and with the leave of the Court, or a Judge, leave the decision of any issue in fact to a Judge. The trial takes place in open Court, and before one or more Judges of the Court, or Judges who are included in the same Commission, and the verdict has the same effect as that of a Jury, except that it cannot be questioned on the ground of being against the weight of evidence.

The above is the mode in which issues in fact are invariably eliminated between the parties. There is no mode of determining questions of fact *by means of a jury*, without pleadings such as exists in England, under the Common Law Procedure Act of 1852. Feigned issues may be directed to be tried under the provisions of the Interpleader Act in the same manner as in England.

Trial of Issues of Law.

If the issues which arise upon the pleadings are issues of law raised by demurrer, it is the duty of the party taking the demurrer to make up the demurrer books, which are a transcript of the demurrer, and of those parts of the pleadings to which the demurrer relates, with marginal notes showing the substance of the pleadings, and a statement of the points upon which the party demurring intends to rely. Four of such copies of the demurrer books must be lodged with the clerk of the rules within six days from the filing of the demurrer, otherwise the demurrer will be deemed to be set aside. After the demurrer books have been lodged, they remain for two days in the office of the clerk of the rules, in order that the opposite party may add a statement of the points upon which he relies in support of the pleading demurred to. After the lapse of this time the demurrer books are delivered to the Judges of the Court. No joinder in demurrer is necessary, but after the demurrer books have been delivered to the Judges, either party may, by entering a side bar order, set down the demurrer for argument before the Court. Issues of law may, after writ issued and before judgment, be stated in the form of a special case for the opinion of the Court without pleading. The case is set down and argued in the same manner as a demurrer.

Demurrer books.

No joinder in demurrer.

Interlocutory Motions before Trial.

Having now traced the progress of a suit at law to the joinder of issue between the parties, it will be convenient at this stage to notice two or three incidental proceedings which frequently occur in the progress of the action, and before the cause is brought to trial, but which could not have been noticed before without withdrawing attention from the main course of the suit.

The first of these is an application for further particulars of the plaintiff's demand, which the Court, if satisfied that the possession of such particulars is essential to the preparation of the defence, will compel the plaintiff to furnish, not only in actions of contract, but also in actions of tort—such as trespass, slander, or the like; and the Court may also, in actions for injury to person or property, order plans of the place in which the injury is alleged to have been committed, or as to which any justification is pleaded, to be exchanged between the parties. Such an application should be preceded by service of a notice, calling for such particulars, otherwise the costs of the motion will be refused to the defendant, even if successful. On the motion for this purpose, the Court may extend the time for pleading, if they consider it necessary, but without such order the time is not extended, as of course.

The next interlocutory application most frequently made is for security for costs, where the plaintiff is resident out of the jurisdiction of the Court. Security for costs will be enforced in the same cases in which it is required in England. In order to enforce security for costs, a preliminary notice should be served on the plaintiff's attorney, and if he, in answer to such notice, undertakes to comply with it, the costs are measured by the Master of the Court, and security for this amount given, either by depositing the amount in Court, or in such other way as the Master of the Court may fix. If this notice be not complied with, by the plaintiff giving such an undertaking as before-mentioned, the defendant may apply by motion on notice to the Court for an order that the further proceedings in the action be stayed until the plaintiff shall have given this security. This motion must be grounded on a satisfactory affidavit that the defendant has a defence to the action on the merits. As to what constitutes such a satisfactory affidavit as the statute prescribes, some diversity of practice exists between the different Courts. Thus in the Courts of Queen's Bench and Common Pleas an affidavit that the defendant believes he has a defence on the merits has been deemed a sufficient compliance with the terms of the statute; while, on the other hand, the Court of Exchequer requires the affidavit to set forth the facts upon which the defendant relies to sustain his defence, so that the Court itself may judge whether or not they form a defence upon the merits to the action. The application for security for costs

must, as a general rule, be made before the defence is filed, and the order, if made, is absolute in the first instance; but if the time for pleading has expired before the motion to compel that security has been heard, the defendant may preserve his right to enforce such security by accompanying the notice of the filing of the defence with a statement that the defence is filed without prejudice to the motion then pending to enforce security for costs. The costs of the motion if granted form part of defendant's costs in the cause.

Another application of frequent occurrence before the trial is to change the venue in the action. This application cannot be made until after the defence has been filed. It has been before observed that the venue in all personal actions is transitory, but the Court may, upon being satisfied that the case can be more conveniently tried in another county, direct the venue to be changed. The practice no longer exists of changing the venue upon what used to be called the common affidavit, that is to say, upon an affidavit stating merely that the cause of action arose in the county to which it was proposed to transfer the venue in the action. All applications to change the venue in the action must be made upon notice grounded upon an affidavit, showing the existence of a preponderance of convenience, whether arising from the nature of the case, the circumstances of the parties, the residence and occupations of the witnesses, or other such like cause in favour of the case being tried in some other county. The order made on the motion, if granted, is absolute in the first instance, and the costs of the application form a portion of the costs of both parties in the cause.

Another application which is frequently made by both parties is for the inspection of some document relied upon by the opposite party in pleading, or in his possession or under his control, or for a discovery of what documents he has in his possession or under his control. Applications of this nature are granted either under the general jurisdiction of the Court, which is exercised in accordance with the same principles which prevail in England, or under the Act 14 & 15 Vict. c. 99., or under the 64th section of the Irish Common Law Procedure Act, 1853, as a substitute for oyer, or under the 55th section of the Irish Common Law Procedure Act, 1856, which is an exact transcript of the 50th section of the English Common Law Procedure Act, 1854.

An inspection of real or personal property by either party, his attorney, agent, or witnesses, or by the jury, may be obtained by motion before trial.

Another interlocutory application which is sometimes made is for an injunction or mandamus; the practice in these cases is the same as in England.

Interlocutory applications, if made during term, are made to the full Court or to a Judge, according as they are upon notice or of course.

Interlocutory motions, if made after term, are made to a Judge sitting in what is called the Consolidated Chamber. This tribunal is constituted by one of the Judges of the Court, who sits in rotation, for the hearing of motions arising in all the Courts; and such Judge is empowered to transact all such business depending in any of the Courts as relates to matters over which the Courts have a common jurisdiction, and as may, according to the practice of the Courts, be transacted by a single Judge.

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motions after term.

All notices of motion must be served two clear days before the day upon which they are moved, and if grounded on an affidavit, the affidavit must be filed at the time when the notice is served, and this fact mentioned in the notice, and copies of all such affidavits must be furnished with the notice to the opposite attorney.

Notices of motion, when to be served.

PROCEEDINGS TOWARDS A TRIAL.

Notice of trial must be given ten days, and short notice four days, before the trial. If the plaintiff is not ready to proceed, he may give notice of countermand. This notice is a four-day notice, unless the defendant is under terms to accept short notice of trial, in which case it is a two-day notice.

Notice of trial.

Notice of countermand.

If the plaintiff does not proceed to trial pursuant to his notice, in case the same has not been duly countermanded, a rule may be entered to compel the plaintiff to pay the costs of the day, and that in the meantime the proceedings may be stayed. This rule, so long as it continues in force, is an answer to an application for judgment, as in case of a nonsuit.

Rule for the costs of the day.

The practice as to trials by juries, and the entry of judgment as in case of a nonsuit, is, with the exceptions which will be noticed in the statement of differences, the same in both countries.

When the abstract of issues is agreed to or settled, it is transcribed upon parchment, and serves as the Nisi Prius record in the action. The particulars of demand and set-off, and a copy of the panel of the jurors, are annexed to it.

Nisi prius record.

The provisions as to summoning common and special juries, enforcing the attendance of witnesses in other parts of the United Kingdom, and taking the evidence of witnesses residing in India and the colonies, are, with the exceptions which will be hereafter noticed in the statement of differences, the same in both countries.

Juries and witnesses.

A cause may be tried according to the venue either at the Assizes in the county in which the venue is laid, or, in the case of venues in the county or city of Dublin, either before the Chief Judge of the Court in which the action arises, or in certain cases specially mentioned in the Irish Common Law Procedure Act, 1853, before the Court of Consolidated Nisi Prius. This Court is constituted by a Judge of each Court sitting in rotation, during term, for the trial of certain issues of fact arising in all the Courts. The class of cases which may be tried before it will be found fully detailed in the report on the points of differences.

Place trial.

PROCEEDINGS AT TRIAL.

The practice as to the conduct of the trial is the same in both countries. The provisions as to the powers of amendment, adjourning the trial, stamping of documents, reception of evidence, compulsory reference by a Judge of matters of account involved in an issue left to him, which are contained in the English Common Law Procedure Act, 1852, and the

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the English Common Law Procedure Act, 1854, are the same as those contained in the Irish Common Law Procedure Act, 1853, and the Irish Common Law Procedure Act, 1856.

Verdict: 1. General. 2. Special.

The verdict of the jury is either *general* for the plaintiff or defendant, *or special* when the jury find the facts of the case specially, leaving to the Court the application of the law to the facts as so found. When a special verdict is found, it is set down and argued before the Court in Banc, in the same manner as a demurrer, and their judgment may be reviewed in the Court of Error.

3. Subject to a special case.

A verdict may be found by the jury for either party, subject to the opinion of the Court on a special case agreed upon by both parties. This course of proceeding is so rarely adopted in Ireland that it is not necessary to notice it further than to observe, that in cases in which it is resorted to the practice is the same as in England.

Postea.

The Postea is made up by the Judge's Registrar, and endorsed upon the Nisi Prius record, and contains the findings of the jury upon the issues left to them, thus carrying on the history of the proceedings to the conclusion of the trial.

Bills of Exceptions.

A Bill of Exceptions may be tendered before verdict where either party is dissatisfied with the direction of the Judge trying the cause in point of law, or with his rejection or admission of evidence. In Ireland, bills of exceptions are incorporated into the postea, may be examined by the Court in which the action is pending, and a writ of error afterwards brought on the judgment of that Court.

Certificate for Special Jury.

Upon the delivery of the verdict, if the case has been tried by a special jury, the party who required such jury, if successful, must apply to the Judge to certify that the cause was a fit one to be so tried, otherwise he will be deprived of the costs of such Jury.

Certificate for immediate execution.

If the plaintiff has reason to believe that the fruits of the verdict may be lost within the time limited for entering judgment, he may apply to the Judge for a certificate for immediate execution; or the party against whom the verdict has been obtained may, in like manner, apply to the Judge to respite execution on the ground that reasonable grounds exist for supposing that the Court will set aside the verdict.

Respiting execution.

Certificates for costs.

Certificates to entitle a plaintiff to Costs are also required in certain cases falling under the 126th and 243rd sections of the Irish Common Law Procedure Act, 1853, and the 97th section of the Irish Common Law Procedure Act, 1856, and should be applied for at the trial, and endorsed upon the abstract for Nisi Prius, and signed by the Judge.

Proceedings after Trial to Judgment.

The proceedings at the trial and the verdict may be impeached in some or all of the following ways.

Motion for a new trial.

1. *Motion for a New Trial,* which is usually grounded on a misdirection of the Judge on some point of law material to the case, or the improper reception or rejection of evidence at the trial, or on the ground that the verdict was against evidence, or the weight of evidence, or obtained by surprise, or that the damages are excessive.

Motions to enter verdict pursuant to leave reserved.

2. *Motions to enter a verdict or non-suit pursuant to leave reserved.*—This course can only be adopted where the leave has been reserved at the trial, and with the assent of both parties at that time.

Every application for a new trial, or to enter a verdict or nonsuit, must be grounded on the certificate of the leading Counsel at the trial, stating, shortly, the facts of the case and grounds upon which, in his opinion, a new trial should be granted. The conditional order in practice always states the ground upon which the new trial is granted, and on the motion to show cause, the party sustaining the order will be restricted to the grounds of objection specified in the conditional order.

Motions in arrest of Judgment, or for Judgment non obstante veredicto.

3 and 4. *Motions in arrest of Judgment, or for Judgment non obstante veredicto.*—The practice in relation to these motions is the same in both countries.

None of these four classes of motions can be made after the first four days of the term next after the trial, if the trial was had out of term, or within the first four sitting days after the trial, if had in term.

The power of appeal in these cases is the same as in England, and is regulated in Ireland by the Irish Common Law Procedure Act, 1856, ss. 40–48.

Motion for a trial de novo.

5. *Motion for a trial de novo* (formerly a *venire de novo*).—This proceeding is similar in many respects to a motion for a new trial. It differs principally from that proceeding in this, that the award of a trial de novo must be granted on some matter appearing on the record, such as a defective finding by the Jury, as by not stating a fact with sufficient certainty, or not assessing the damages separately, where there is a defective count, or finding a wrong verdict where the Judge has given a direction appearing by a Bill of Exceptions to be wrong, which is the most usual case in which it is granted.

Error may now be brought on an award of a venire de novo—Irish Common Law Procedure Act, 1856, s. 49.

Repleader.

6. *Motion for Repleader.*—This motion is necessary where the parties have so mistaken the true question in the case that they have raised an issue which, for whomever it may be found, will not decide the cause either one way or the other. In such case the Court, not knowing for whom to give judgment, will compel the parties to plead de novo. Upon such an order the parties begin again at the first step which occasioned the immaterial issue. No costs are given to either side, nor will the order be made in favour of the party who made the first mistake.

Judgments.

Final judgment.

Judgments are either final or interlocutory. Final judgment, when the plaintiff's claim is for a debt or liquidated demand in money, may, in default of appearance and defence, be marked on a simple affidavit of debt, ascertaining the amount due.

Interlocutory judgment.

The most common kind of interlocutory judgment is that in which the plaintiff's right to damages has been determined, but the amount of the damages remains unascertained, as, for instance, when the plaintiff has obtained judgment on demurrer, or the defendant has suffered judgment by default. In these cases further steps are necessary for ascertaining the amount of the plaintiff's demand, before final judgment can be

marked, and these may be taken in some of the following ways.

1. In actions in which the amount of damages is substantially a matter of calculation, the amount for which final judgment shall be marked, may, without any order of the Court or Judge for that purpose, be ascertained by the Master of the Court, either by affidavit or on oral evidence.

The Master hears the evidence, ascertains the amount of damages, and signs final judgment for the amount so ascertained.

2. Where the plaintiff's claim is not for a debt or liquidated demand, and is not substantially a matter of calculation, the damages may be ascertained under a writ of inquiry before the Sheriff of the county in which the venue is laid, or by an order of the Court or a Judge in country causes, and in town causes, without such order, the inquiry may take place before the Master of the Court, and a jury of the county of the city of Dublin, and on the verdict being found, the Master indorses the finding of the jury on the rule or order and delivers it to the plaintiff.

In cases of difficulty and of very rare occurrence, the Court or a Judge may order the inquiry to be sped before a Judge of Assize or Nisi Prius. The proceedings before the Sheriff or Master are, as nearly as may be, the same as in an ordinary action at Nisi Prius. When the writ of inquiry is returned, or the rule endorsed by the Master with the finding of the jury, judgment may be signed *forthwith*, unless the Sheriff or Master certifies that judgment ought not to be signed until the defendant has had an opportunity of applying to the Court, or unless a Judge thinks fit to order the judgment to be stayed.

In all cases tried out of term, after verdict or nonsuit, judgment may be signed at the expiration of fourteen days from the day of trial, or in cases tried in term, within four days from the day of trial, unless the Judge who tries the cause, or some other Judge, or the Court, otherwise order.

In writs of inquiry sped before a Judge, the proceedings from the trial to Judgment are the same as in the ordinary trials at Nisi Prius.

Costs.

Incident to the judgment are the costs which are awarded to the successful party. Costs are either interlocutory or final. Interlocutory costs are given upon summary proceedings arising in the course of the suit. They are generally regulated by the discretion of the Court, and the cases in which the granting or withholding of them are governed by fixed rules, have been noticed in that part of the foregoing sketch which relates to interlocutory proceedings.

Final costs are given by the Statute of Gloucester in all cases in which damages are recovered by verdict, and by 8 Will. 3. c. 10. upon a judgment on demurrer, and by the Irish Common Law Procedure Act, 1853, s. 151, in proceedings upon writs of revivor the rights of the parties to costs are the same as in personal actions.

As a general rule the successful party is entitled to recover the full costs of suit from the party defeated; but several exceptions have been engrafted by the Irish Common Law Procedure Act, 1853, and the Irish Common Law Procedure Act, 1856, on this rule.

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1. In actions for slander, if the plaintiff recovers less than forty shillings he recovers no more costs than damages, and the Judge has no power to certify so as to entitle the plaintiff to costs.

2. In actions for assault and battery, if the plaintiff recovers less than forty shillings the plaintiff can recover no more costs than damages, unless the Judge certifies that the assault and battery was sufficiently proved.

3. In actions for a trespass upon land, if the plaintiff recovers less than forty shillings he recovers no more costs than damages, unless the Judge certifies that the freehold or title to the land was chiefly in question, or that the trespass was voluntary or malicious.

4. In case the plaintiff and defendant both reside within the jurisdiction of the Civil Bill Court in which the cause of action has arisen, and the plaintiff recovers in an action of contract (except for breach of promise of marriage), less than twenty pounds, or in an action for any wrong or injury disconnected with contract (except replevin, or for slander, libel, malicious prosecution, seduction, or criminal conversation), a sum less than five pounds, the plaintiff is not entitled to any costs unless the Judge certifies that the case could not have been tried in the Civil Bill Court, or that, though capable of being tried there, it was a fit case to try in the Superior Courts, or in cases where there is no trial unless the Court or a Judge make an order to the like effect.

5. In the class of actions mentioned in No. 4, if the parties reside in different Civil Bill jurisdictions, the plaintiff is only entitled to recover half the usual costs, and the Judge has no power to certify so as to entitle the plaintiff to costs on a higher scale.

The costs of every issue, whether of law or fact, follow the finding or judgment on that issue whatever be the result of the other issues.

The right to double or treble costs has been abolished by the Statute 5 & 6 Vict. cap. 97. s. 1.

Execution.

Writs of execution are judicial writs, and those in ordinary use are the writs of fieri facias, capias ad satisfaciendum, elegit, and charging order. Execution may be issued forthwith on judgment being signed. If speedier execution is required, application must be made to a Judge to sign judgment forthwith, and an affidavit is generally required, stating special circumstances to ground the application.

It is unnecessary to go into a detailed account of the forms of writs and their endorsement. The difference between the practice of the two countries on this subject, which entirely consists of matters of detail, will be found fully set out in the Statement of Differences annexed hereto.

Garnishee orders.

The provisions as to execution for the specific return of a chattel detained, and as to the power of a judgment creditor to attach debts due to his debtor are substantially the same in both countries.

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The Judge, however, possesses no such discretion as to withholding a garnishee order where the amount to be recovered, or the debt sought to be attached is small, as exists in England under the English Common Law Procedure Act, 1860. Nor has the Judge any power of compelling the attendance of a third party, and deciding his right to the debt, such as exists in England under that statute.

Proceedings to revive Judgments, and other proceedings by and against parties not parties to the record.

Revivor.

During the lives of the parties to the judgment, or the survivor of them, in cases in which the action survives, writs of execution may be issued within six years from the recovery of the judgment without any revival.

The proceedings to revive a judgment may be taken either by suggestion or writ of revivor, and the cases in which these different modes of proceeding are applicable are the same in both countries. If the judgment is more than six and less than ten years old a writ of revivor is allowed without any rule or order; if more than ten years old not without a rule or order.

Scire Facias.

Scire Facias.

The writ of scire facias, though in a great measure superseded by the proceeding by suggestion, or writ of revivor, is not entirely abolished; and by the Irish Common Law Procedure Act, 1853, section 153, certain writs of scire facias, particularly enumerated in this section, are to be dated, directed, and proceeded upon, in like manner as writs of revivor.

Replevin.

Before closing this review of the proceedings in personal actions, it may be well to notice two or three peculiarities connected with the proceedings in replevin. These proceedings are now regulated by the Irish Common Law Procedure Act, 1853, sections 228–230, and the Irish Common Law Procedure Act, 1856, section 100, and are applicable to all cases of wrongful taking, and not merely to the recovery of goods distrained for rent or damage feasant.

It will be recollected that the action of replevin, as a distinctive form of action, has been abolished in Ireland by the Irish Common Law Procedure Act, 1853, section 5, and is now included in the general class of personal actions. Except, therefore, in the cases in which a special mode of procedure is provided in this action, the general course of practice in personal actions is applicable to proceedings in replevin.

Form of writ of summons and plaint in Replevin.

Service of Replevin.

Writ of Replevin.

The action, in the nature of an action of replevin, is commenced by writ of summons and plaint, which, in addition to the other requisites of an ordinary summons and plaint in a personal action, must state the particulars of the property seized, and the place of caption; and service of it may be effected on the agent, or other person acting in the making of the seizure or distress, or in keeping the goods. If the plaintiff is desirous of having the immediate possession of the goods in specie, he may, *after action brought*, sue out of the Court in which the action has been instituted a writ of replevin, the form of which is given in Schedule B., No. 23, to the Irish Common Law Procedure Act, 1853, and which has the same effect as a writ of replevin and recaption formerly had.

The appearance and defence is in the same form as that in any personal action; but the period within which rules for non pros, and for judgment, as in case of a non-suit, may be entered, are considerably shorter than those in ordinary personal actions. Thus if the plaint is not filed within ten days from service, the defendant may enter the rule under the 38th section of the Irish Common Law Procedure Act, 1853, corresponding to the rule for non pros; and if the plaintiff does not proceed to trial within *one* term after the defence or last pleading has been filed, the defendant may enter the rule prescribed by the Irish Common Law Procedure Act, 1853, sect. 106, corresponding to the rule for judgment as in case of a non-suit. And by the Irish Common Law Procedure Act, 1853, sect. 230, if the plaintiff suffers judgment of non pros, the defendant may file a suggestion in the nature of a plaint for rent, and thereupon, or in case the defendant obtain judgment on demurrer, the Court may direct a writ of inquiry to the Sheriff or Master to ascertain the rent and the value of the distress, and upon the return of the inquisition the defendant may sign judgment, and issue execution for the amount of the arrears of rent so ascertained. If the plaintiff is non-suited, or a verdict given against him on the trial, the jurors are bound, on the demand of the defendant, to ascertain the value of the distress, and the arrears of rent due; and the defendant may sign judgment, and issue execution for such arrears. The provisions of this section do not appear to apply to a case where the plaintiff has suffered judgment, as in case of a non-suit for default in not proceeding to trial.

Ejectment.

The proceedings in ejectment are regulated by the Irish Common Law Procedure Act, 1853, sects. 194–227, the Irish Common Law Procedure Act, 1856, sects. 89, 94, 95, and the Irish Landlord and Tenant Law Act, 1860 (23 & 24 Vict. c. 154.), and General Orders, 1854, 184–191, and General Orders, 1856, 3 & 4. They may be considered under the following heads:—

1. Ejectment on the title in ordinary cases.
2. Ejectment by a landlord for non-payment of rent.
3. Ejectment by a landlord on the determination of a tenancy.
4. Ejectment by a landlord where the right of entry accrues, or the tenancy expires in or after Hilary or Trinity terms.

1. *Ejectment on the title in ordinary cases.*

The proceedings under this head are, to a great degree, similar in England and Ireland. They are regulated by the Acts above-mentioned, and the General Orders, 1854, 184, 185, and 188–191, General Orders, 1856, 3, and may be shortly stated as follows.

A writ of summons and plaint is issued, directed to the immediate tenant or any one tenant in possession, with the addition of the words, "and all other persons concerned."

It is intituled as an ordinary writ of summons and plaint, with the exception that the description of the parties and the character in which they sue and are sued, need not be inserted after the names of the parties in the margin of the writ, as in personal actions. The writ states the names of all the persons in whom the title is alleged to be, and requires the persons to whom it is directed to appear within 12 days after service in the same manner as in an ordinary personal action. All the provisions before referred to, in reference to the issuing, filing, duration, and renewal of the writ in personal actions, apply to the writs of summons and plaint in ejectment.

The writ is served in the same manner as an ejectment was before the Act, or in such manner as the Court or Judge shall order, and in case of vacant possession, by posting a copy of the writ on the dwelling-house or other conspicuous part of the premises.

Every person named in the writ of summons and plaint, or upon whom the writ has been served, is entitled to file an appearance and defence to the writ, as of course, within the time limited for that purpose, and any other person may do so in like manner by leave of the Court or a Judge, on filing an affidavit, showing that he is in possession by himself, or his tenant.

The appearance and defence is similar in form to an appearance and defence to a personal action. The form is given in Schedule B. to the Irish Common Law Procedure Act, 1853, No. 16, and simply alleges that the plaintiff is not entitled to the possession of the land sought to be recovered, and that such possession belongs to the defendant as of right. Defences may be either general or partial, according as the defendant claims to be entitled to the whole or part of the property sought to be recovered. And in case of an action brought by a joint tenant, tenant in common, or co-parcener, any joint tenant, &c., in possession, may, by his defence, allege that he is joint tenant, &c., and defends as such, and admits the plaintiff's right to a share of the premises sought to be recovered, but denies ouster, in which case an issue as to the fact of such ouster will be inserted in the abstract for Nisi Prius in addition to the usual statutable issue.

Under the Irish Common Law Procedure Act, 1856, sect. 89, the Court has power to make an order directing temporary bars to be waived, and the real title tried in any case in which it shall be made to appear to the satisfaction of the Court that a decree to the same effect would be made by the Court of Chancery in a suit for the purpose of having temporary bars waived.

If no defence or a partial defence only is filed, the plaintiff may sign judgment for the whole, or the part to which the defence does not apply; but no mesne rates or costs are recoverable on such judgment.

When a defence has been filed an abstract for Nisi Prius is made up in the same manner as in personal actions, stating the fact of the defence, with the date when each person has taken defence, and the nature of such defence, so that it may appear for what defence is taken. The only issue, except in particular cases, *e.g.*, where a question of ouster has to be tried, is whether the plaintiff was entitled to the possession of the lands, or any part of them, on the day upon which the title is alleged to have accrued, or on any day subsequent to that day, and before the commencement of the action, and whether the plaintiff is entitled to any, and what damages for loss of mesne rates and profits. On the trial the plaintiff may prove for the amount of mesne rates, and have a verdict entered for that sum, and mesne rates may now be assessed down to the time of verdict. On a finding for the plaintiff judgment may be signed for the recovery of possession, and damages for mesne rates, and a writ of habere facias possessionem issued for the recovery of the possession of the lands, in which writ may be included a writ of Fi. Fa. or Ca. Sa. for the recovery of the mesne rates and costs, or at the option of the plaintiff, separate writs of Fi. Fa. or Ca. Sa. may be issued for this purpose.

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Statutable issue in ejectment.

Recovery of mesne rates.

Execution.

2. *Ejectment by Landlord for Non-Payment of Rent.*

Ejectments of this class may be brought.

1. At Common Law grounded upon a forfeiture. This proceeding is never adopted in Ireland. The nicety and exactness required to be observed in ejectments at Common Law have led in practice to this remedy being disused.

2. *Statutable Ejectment for Non-Payment of Rent.*

This proceeding is now regulated by the Irish Common Law Procedure Act, 1853, the Irish Common Law Procedure Act, 1856, the 23 & 24 Vict. c. 154. (the Irish Landlord and Tenant Law Act, 1860,) sects. 3, 52, 53, 55, 58, 62, 64, 67, 70; and by General Orders, 1854, 186–191, and General Orders, 1856, 3, 4.

Under the provisions of the latter statute the relation of landlord and tenant is no longer founded upon tenure or service; but is deemed to subsist, in all cases in which there is an agreement, whether express or implied by one party, to hold from or under another in consideration of rent. The existence of a legal reversion, or a right of re-entry, is no longer necessary to maintain an ejectment for non-payment of rent, provided a tenancy between the parties shall appear to exist, whether by original contract or by lawful assignment, devise, bequest, or act, and operation of law; and *in all cases* in which a year's rent is due under such contract of tenancy, and either before or after the right of re-entry has accrued under it, the landlord may proceed by ejectment for the recovery of the possession of the lands. The form of the writ of summons and plaint is given by the Irish Common Law Procedure Act, 1853, Schedule B., No. 15; and is in a great measure the same as in an ordinary ejectment on the title, it must be endorsed with a statement of the amount claimed to be due for rent after all fair allowances, and that if that amount be paid, together with a sum not exceeding £1 10*s.* for costs, all further proceedings will be stayed. The only persons upon whom service need be effected are the persons in actual possession as tenants or under-tenants.

Relation of landlord and tenant depends on contract and not on tenure.

Service, on whom to be effected.

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Mode of service of ejectment for non-payment of rent.

Service of the writ is effected either by personal service on the defendant at any place, or by leaving a copy of the writ with some member of his family or household, at his dwelling-house, or on his clerk, at his place of business, or in such other manner as shall appear to the Court, or a Judge, to be sufficient. Service in cases of vacant possession is effected by affixing a notice on the premises, and also on the usual place for posting notices at the nearest market town.

Appearance and defence.

An appearance and defence is filed as in an ordinary ejectment on the title, and should set forth the substantial ground of the defence, as for instance, whether the title of the landlord, or the fact of the rent being due is disputed. No partial defence can be taken in an ejectment for non-payment of rent without the special leave of the Court. The abstract for Nisi Prius is in the same form as in an ordinary ejectment on the title and contains the same statutable issue.

Tender of rent and payment into Court.

The defendant may at any time before notice of trial or judgment pay into Court a sum of money for rent, with an undertaking to pay the costs then incurred when taxed, and in case of non-payment to suffer judgment to be marked, and an attachment to issue; and if after this the plaintiff proceeds to trial, he does so at his own peril, as in cases of payment of money into Court in a personal action.

Redemption before execution.

The defendant, or any person having a specific interest in the lands, may, before the writ of habere facias possessionem has been executed, tender to the landlord the rent and costs; and this tender may be followed by a payment into Court, and a summary application to the Court or Judge, who upon such application may direect further proceedings to be stayed.

Redemption after execution.

The provisions enabling the Courts of Common Law, or a Judge, to relieve against forfeiture for non-payment of rent, and direct restitution of possession after the execution of an habere facias possessionem, in cases in which relief could formerly have been obtained only by the intervention of a Court of Equity, are virtually the same in both countries.

3. *Ejectment by Landlord upon the termination of a Tenancy.*

The writ in this case is in the same form as in an ordinary ejectment on the title, and is served in the same manner as an ejectment for non-payment of rent. At the foot of the writ the plaintiff may address a notice to the tenant requiring him to find bail. The course of procedure in this case is regulated in Ireland by Landlord and Tenant Amendment Act, 1860, sect. 75, which corresponds in terms with the English Common Law Procedure Act, 1852, sect. 213; and the distinction between the practice of the two countries, which is entirely confined to matters of detail, will be found in the Statement of Differences.

With the foregoing exceptions the practice in ejectments of this class is the same as in ordinary ejectments on the title.

4. *Ejectment by Landlord where the right of entry accrues, or the tenancy expires, in or after Hilary or Trinity Terms.*

The proceedings in these cases are regulated by the Act 1 & 2 Will. 4. c. 41. s. 12, which was passed with the view of enabling landlords to whom a right of entry accrues, immediately after the issuable terms to have a trial at the ensuing assizes. The writ, which must be issued and served within ten days after the tenancy expired, or the right of entry accrued, is in the usual form; except that it commands the persons to whom it is directed to appear in ten in place of twelve days. If the defendant appear, proceedings to a trial are the same as in other cases, except that "at least six clear days' notice of trial" must be given. The section of the Act 1 & 2 Will. 4. c. 41. regulating the procedure in this class of ejectments, has not been adapted to the present mode of procedure in ejectments; and serious difficulties will, no doubt, arise in reconciling its provisions with those of the Landlord and Tenant Amendment Act in relation to ejectments for non-payment of rent.

There is one peculiarity common to all classes of ejectments in Ireland, which it is right to notice before concluding this sketch. The appearance and defence to an ejectment of whatever kind being, according to the practice in Ireland, strictly a pleading, equitable defences may be pleaded in all classes of ejectments in the same cases in which they may be pleaded in personal actions.

(Signed) Hewitt P. Jellett.

I.—3. Mr. Holland's Statement on the Practice and Procedure of the Superior Courts of Common Law in England.

Common Law.

Statement of Mr. Holland as to England.

The following Statement contains only a very concise account of the different steps in an action commenced in one of the Superior Courts at Westminster, with the view of rendering more intelligible the Joint Statement of Messrs. Jellett and Holland of the differences in the Practice and Procedure of the Superior Courts in England and Ireland respectively.

Courts and Judges.

It may be shortly stated that there are four *puisne* Judges in each Court, and a Chief Justice or Chief Baron. Three *puisne* Judges only can sit in *banc* at the same time, except during the absence of the Chief. (1 Will. IV. c. 70.)

The Courts sit every day in term, except Sundays and the days between the Thursday next before and the Wednesday next after Easter, or any of them, when they fall in term. And by C. L. P. Act, 1854, sect. 95, the Courts may appoint and hold sittings in *banc* at any time, whether in term or vacation, not being between the 10th of August and the 24th of October.

In the Court of Queen's Bench, one of the *puisne* Judges, while the others are sitting in *banc*, sometimes sits apart from them in the Bail Court, for the purpose of administering oaths, receiving declarations required by statute, and hearing and deciding upon matters on motion. Generally, if the Bail Court is sitting, all simple matters, including motions for new trials, &c., in cases tried under writs of trial from the Queen's Bench, are moved before the single Judge in the Bail Court. In cases of difficulty, if the Judge entertain any doubt, he can refer the application to the full Court, or grant a rule *nisi*, against which cause is shown before such Court. A rule made in the Bail Court is not more liable to be re-opened than a rule made in the full Court. A single Judge in the Bail Court may reverse the decision of a Judge at chambers.

One *puisne* Judge from each Court sits, with certain exceptions, every day at chambers to grant and decide summonses, and make orders in a great variety of cases. While the circuits are going on, one Judge stays in town and does the chamber business of all three Courts.

Forms of Action.

In England Forms of Action are not specifically abolished; but the Common Law Procedure Act, 1852, abolishes the technicalities of pleading, which rendered necessary a strict adherence to the forms of expression peculiar to each action, and to the particular injury which it was intended to redress. Since that Act a blunder in the form of the remedy cannot, in any case, affect the ultimate success of the cause. No form of action need be mentioned in the writ (sect. 3, C. L. P. Act, 1852), joinder of different causes of action is allowed (sect. 41, C. L. P. Act, 1852), special demurrers are abolished, and large powers of amendment are granted.

The Forms of Action were, till very recently, divided into three classes, Real, Mixed, and Personal.

Real and mixed actions.

By 3 & 4 Will. 4. cap. 27. all Real and Mixed Actions were abolished, except four: Writ of Right of Dower, Dower, Quare Impedit, and Ejectment. As regards the first three actions, a great change has been effected by sects. 26 & 27, C. L. P. Act, 1860. They are now abolished as real actions, and are to be commenced by Writ of Summons, as in the case of any ordinary action; and all subsequent proceedings in such action are to be subject, as nearly as may be, to the same rules and practice as the proceedings in an ordinary action.

Dower and quare impedit. 23 & 24 Vict. c. 126.

No further special remarks need, therefore, be made as to these three actions, except that they can only be brought in the Court of Common Pleas.

Ejectment.

The action of Ejectment shall be treated of separately, after the proceedings in Personal Actions have been stated.

Personal actions.

Personal Actions are divided into two classes, actions on contracts, and actions for wrongs independent of contract. (*See* Schedule B. of C. L. P. Act, 1852.)

17 & 18 Vict. c. 125.

There are also Actions under Writs of Mandamus and Injunction. (*See* C. L. P. Act, 1854, sects. 68–70 and 79–81.) But as the proceedings in these actions are the same in England and Ireland, no further notice need be taken of them.

The following statement of the proceedings in a personal action does not include the actions of replevin, scire facias, or revivor, unless they are expressly mentioned.

Personal Actions.

Statutes of Limitation.

It is not thought necessary to state at length the time within which Personal Actions may be brought, as the times of limitation fixed by Statutes are the same in England and Ireland.

There are special provisions in many cases, *e.g.*, in actions brought for anything done under the authority of any *Public Local and Personal*, or *Local and Personal* Acts, passed before 10th August 1842 (*see* 5 & 6 Vict. c. 97. s. 5); in actions brought against Justices (11 & 12 Vict. c. 44. s. 8); in actions to recover compensation for families of persons killed (9 & 10 Vict. c. 93.); in actions on penal statutes by a common informer (31 Eliz. c. 5., and 3 & 4 Will. 4. c. 42.), and other cases, but it would be beyond the object of this statement to set these out at length.

Notices of action.

There are many cases in which notice of action must be given to the defendant before the writ is issued. This protection is almost always granted by Statute, where the defendant is a person acting in a public capacity, and the action is in respect of a matter done by him in the execution of his duty. Thus, Justices of the Peace, Commissioners of Bankruptcy, Judges and Officers of the Courts, Officers of the Army and Navy, &c., are entitled to such notices. In all cases the notice must be given one calendar month

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at least before any action shall be commenced. 5 & 6 Vict. c. 97. s. 4.

Statement of Mr. Holland as to England.

WRITS OF SUMMONS.

All personal actions must be commenced by Writ of Summons, which is a Judicial Writ, and which may be issued out of any one of the Superior Courts. The general requisites of all writs of summons are the same; and the object of the various writs (with the exception of the writ under the Summary Procedure on Bills of Exchange Act, 1855), is the same, namely, to compel the defendant to appear. Writs of Summons may not only be issued against persons within the jurisdiction, but also against British subjects, and persons not being British subjects, residing out of the jurisdiction in any place except Scotland or Ireland. (Sects. 18 & 19, C. L. P. Act, 1852.)

18 & 19 Vict. c. 67.

The writ is on parchment, and stamped by the officer of the Court. At the time of issuing the writ, a *præcipe* or short note of instructions specifying the county in which the defendant is supposed to reside, the nature of the writ, the names of the plaintiff and defendant, and of the attorney issuing the writ, and the date, is handed to the officer of the Court, and by him filed.

Concurrent Writs.

Concurrent Writs may be issued within six months from the first issuing of the original writ, and are in force for the period during which the original writ is in force; but they may be renewed. (C. L. P. Act, 1852, sects. 9 & 11.)

Renewal of Writs.

No original writ of summons is in force for more than six months from the date thereof; but if service of it has not been effected, the original or concurrent writ or writs may be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ: And the writ so renewed will avail to prevent the operation of the Statutes of Limitations, and for all other purposes, from the date of the original writ. (C. L. P. Act, 1852, sect. 11.)

Form of Writs and Indorsements, &c.

The forms of the different writs above mentioned are found in Schedule A. to the C. L. P. Act, 1852, Nos. 1, 2, and 3. The time given to the defendant to appear in is eight days, when he is in the jurisdiction; in other cases it is regulated by the distance he is from England. Provisions are made by sects. 4, 5, 6, and 7 of C. L. P. Act, 1852, as to the form of writs, and the indorsements which are common to all writs; but without going into minor details, it will be sufficient to point out a few differences as to the writs generally in use.

1. Writ not specially indorsed.

1. When a defendant resides within the jurisdiction, and the writ is not, or cannot be, specially indorsed under sect. 25, C. L. P. Act, 1852, a statement of the amount of debt and costs is (amongst other things) indorsed thereon, and that on payment thereof within four days proceedings will be stayed.

Personal service on the defendant should, if possible, be effected in all cases (C. L. P. Act, 1852, sect. 17), and an indorsement of the service is to be made on the writ within three days of the service (sect. 15). In case personal service cannot be effected, the Court or a Judge may order that the plaintiff be at liberty to proceed as if personal service had been effected, if it shall appear to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto. Sect. 17, C. L. P. Act, 1852.

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Statement of Mr. Holland as to England.

If the defendant does not appear, the plaintiff may, on filing an affidavit of personal service of the writ, or a Judge's order for leave to proceed, and a copy of the writ, file a declaration, indorsed with a notice to plead in eight days, and may sign judgment by default at the expiration of the time to plead; and if no plea is delivered, and the cause of action is for a claim which might have been specially indorsed, and the amount claimed is indorsed on the writ, the judgment will be final; but the plaintiff will not be entitled to more costs than if he had made such special indorsement and signed judgment on non-appearance. C. L. P. Act, 1852, sect. 28.

2. Writ specially indorsed.

2. Where a defendant resides within the jurisdiction, and the claim is for a debt or liquidated demand in money, arising upon a contract expressed or implied, a special indorsement of the particulars of the claim may be made on the writ and copy after the indorsement of the amount of debt; and such special indorsement will be considered as particulars of demand. (C. L. P. Act, 1852, sect. 25.)

Upon a writ so indorsed the plaintiff may, if the defendant does not appear, file an affidavit of personal service, or a judge's leave to proceed, and *without any declaration*, sign final judgment, (on which judgment no error lies,) and issue execution at the end of eight days from the last day for appearance.

The defendant may, however, on satisfactory affidavits, be let in to defend either before or after final judgment. (C. L. P. Act, 1852, sect. 27.)

3. Writ British subject of jurisd tion.

3. Where the defendant is a British subject and resides out of the jurisdiction, the writ is in lieu of the practice of outlawry upon mesne process, which was abolished by the C. L. P. Act, sect. 24. It purports to be issued for service out of jurisdiction, and the time specified for appearance and payment is regulated by the distance the defendant may be from England. After this time has elapsed, the plaintiff will be allowed to proceed in such manner as the Court or a Judge shall think fit, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of a breach of contract made within the jurisdiction, and that the writ has been personally served upon the defendant, or that reasonable efforts have been made to effect the same, and that it came to his knowledge, and that the defendant wilfully neglects to appear, or is living out of the jurisdiction to defeat his creditors. Before the plaintiff obtains judgment in such case proof of the amount of debt or damages has to be made before a jury or master. (C. L. P. Act, 1852, sect. 18.)

4. Whe defenda is a foreigner of jurisdiction.

4. The fourth form of writ is that against a defendant resident out of the jurisdiction and not being a British subject. The only difference in this case from the last is that service of a *Notice* of the writ is substituted for service of the copy of the writ. (C. L. P. Act, 1852, sect. 19.)

5. Writ for mandamus a injunctions, dower,

5. There remain writs to obtain Mandamus or Injunction, in which cases notices have in addition to be indorsed on the writs that a Mandamus or Injunction will be applied for (C. L. P. Act, 1854, sects. 68 and 79); and writs in Dower and Quare Impedit, when a notice has to be indorsed

that plaintiff intends to declare in Dower or Quare Impedit, as the case may be. (C. L. P. Act, 1860, sect. 26.)

In all other respects these writs are the same as the writs first mentioned.

6. There is also a special writ given by the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67). The form which calls on the defendant within 12 days to obtain leave to appear, and to appear, is given in the Act, and R.G. 1855, and upon this writ the plaintiff may sign judgment, and proceed to execution, as in the case of the specially indorsed writs. The defendant, however, may, on payment of the money into Court, or on an affidavit of merits, or of such facts as a Judge may deem sufficient to support the application, obtain leave to appear and defend. The plaintiff then declares.

Appearance.

The next step in the cause, after service of the writ, is appearance of the defendant. This is effected by handing to the Officer of the Court a memorandum stating that the defendant appears by himself or his attorney. The form is given by sect. 31, C. L. P. Act, 1852.

It has already been shown what steps are to be taken by a plaintiff in case of default of appearance, according to whether the writ is or is not specially indorsed, and whether the writ is for service within or without the jurisdiction.

Joinder of Parties.

It is not necessary to go at length into this matter, as the provisions as to Non-joinder and Mis-joinder of plaintiffs and defendants, and amendments of such Non-joinder and Mis-joinder are substantially the same in England and Ireland. In England, however, by sect. 19, C.L.P. Act, 1860, the joinder of too many plaintiffs shall not be fatal, but every action may be brought in the name of all the persons in whom the legal right may be supposed to exist; and provisions are made in sects. 19, 20, 21, which prevent any hardship arising to the defendant from such mis-joinder.

Pleadings.

After the defendant has appeared, or leave has been obtained to proceed as if personal service had been effected, the pleadings commence; but before discussing them it may be noticed that by the C. L. P. Act, 1852, sects. 42-45, questions of *fact*, agreed upon by the parties, may, after writ issued and before judgment, by consent and order of a Judge, upon his being satisfied that the parties have a *bonâ fide* interest in the decision of such questions, and that they are fit to be tried, be tried without formal pleadings. A form of issue is given in Schedule A., No. 6, and such issue is entered and tried in the same manner as any issue joined in an ordinary action.

The parties are enabled to agree upon the amount to which the successful party will be entitled, and thus to save the costs of having it ascertained by a jury, or else to have it ascertained by a jury.

Upon the finding of the jury on the issue, judgment may be entered for the sum so agreed upon or ascertained; and the judgment will have the same effect as any other judgment in a contested action, whether recorded or not.

Like proceedings may be taken in actions of ejectment under C. L. P. Act, 1852, sect. 179; and in real actions would probably be allowed under C. L. P. Act, 1860, sect. 27. Common Law.

In like manner questions of law may, after writ issued and before judgment, be stated in the form of a special case for the opinion of the Court without pleadings (C. L. P. Act, 1852, sects. 46–48), and error lies unless the parties agree to the contrary. C. L. P. Act, 1854, sect. 32. The case is set down and argued in the same way as a Demurrer. Statement of Mr. Holland as to England. Questions of law tried without pleadings.

Again, a feigned issue may be ordered by a Court of Law or Equity, or by a Judge under the Interpleader Act, 1 & 2 Will. 4. c. 58., and in these cases no pleadings are necessary. Feigned issue.

It may be stated generally that since the C. L. P. Act, 1852, pleadings which clearly and distinctly state facts necessary to sustain the action or defence will be sufficient. No technical language is necessary; immaterial statements have been abolished; and simple forms of the common pleadings, which are to serve as a guide in more complicated cases, are given in the Schedule B. to that Act, and see sect. 91.

Special demurrers are abolished (sect. 51), and if any pleading be so framed as to prejudice or embarrass or delay the fair trial of the action, the Court or a Judge will, upon application, strike out or amend such pleading (sect. 52).

Declaration.

This is the first pleading after the appearance of the defendant. A plaintiff must declare within one year after the writ of summons is returnable, or he will be deemed out of Court; C. L. P. Act, sect. 58. He may declare at any time within that year, except between 10th August and 24th October, but the defendant may, after the expiration of the term next after appearance, give him notice to declare within four days (sect. 53), and if he does not so declare, may sign judgment of *non pros.*

Different causes of action may be joined in the same suit, but this does not extend to replevin and ejectment; and in case the trial of such different causes at the same time should be considered inexpedient, separate records and trials may be ordered (sect. 41). But several counts on the same cause of action are not allowed, unless a Judge should think them proper for determining the real question in controversy between the parties. See rules 1, 2, and 3, T.T., 1853.

The formal parts of the declaration are given in C. L. P. Act, 1852, sects. 59 and 60, and concise forms of declarations are given in Schedule B. of that Act.

The *Venue*, which is the county mentioned in the margin, and where the action is to be tried, must in *local* actions be laid in that county where the cause of action happened. On the application of either party, the Court or a Judge may order the issue to be tried in any other county or place than that in which the venue is laid. 3 & 4 Will. 4. c. 42, sect. 22. In *transitory* actions the venue may be laid in any county. Such venue cannot be changed, unless by consent, without the special order of a Court or Judge, (r. 18, H. T., 1853), and in most cases a special affidavit is necessary. Venue.

With every declaration (unless the writ has been specially indorsed under C. L. P. Act, 1852, sect. 25,) containing common or *indebi-* Particulars of demand.

Common Law.

Statement of Mr. Holland as to England.

tatus counts (such as those numbered 1 to 14 in Schedule B.) the plaintiff has to deliver or file full particulars of his demand, where such particulars can be comprised within three folios, or if they cannot, then such a statement of them as can be so comprised. A copy of such particulars is annexed to the record when entered. (See R. 19, H. T., 1853, and also Rules 20 and 21 H. T. 1853.) Further and better particulars may be applied for to a Judge.

Pleas.

The defendant may, in answer to the declaration, plead *Pleas in Abatement* or *Pleas in Bar*.

1. *Pleas in Abatement* do not admit or deny the cause of action, but set up some matter in fact, the legal effect of which is to preclude the plaintiff from recovering upon the Writ and declaration *as at present framed*.

They are comparatively rare now. They must be pleaded within four days after declaration served or filed, and be verified by affidavit.

2. *Pleas in Bar* are by way of traverse or confession and avoidance.

Time for pleading.

When the defendant is within the jurisdiction the proper time for pleading is eight days, but the time can be extended by a Judge. If the defendant neglect to plead in time, judgment by default may be signed against him; and such judgment, as before shown, will be final where the claim is one that might have been specially indorsed on the writ. C. L. P. Act, 1852, sect. 28.

Several pleas.

Several pleas founded on the same ground of answer or defence will not be allowed, unless proper for determining the real question in controversy, (R. 2, T. T., 1853,) but, by leave of the Court or a Judge, a defendant may plead as many several matters as he shall think necessary, and such matters may be by way of traverse or confession and avoidance (sect. 81). Certain pleas which are those most commonly used, as set-off, payment, bankruptcy, infancy, coverture, &c., may be pleaded together, as of course, without leave (sect. 84). If several pleas, other than those mentioned in sect. 84, are pleaded together without leave, plaintiff may sign judgment.

A defendant may also, by leave of the Court or a Judge, plead and demur to the declaration at the same time (sect. 80), and the Court or Judge may direct which issue shall be tried first.

No formal commencement or conclusion is necessary for any plea, avowry, or pleading, but a common form is given in sect. 67, C. L. P. Act, 1852. Concise forms of pleas are given in Schedule B. of that Act; and the effect of the

General issue.

general issue is limited and specified in Rules 6, 15, 16, 19, 20, T.T., 1853. It is now a mere denial of the gist of the action, and all matters in confession and avoidance must be specially pleaded.

Particulars of the set-off have to be furnished with a plea of set-off, as in the case of a declaration, and further and better particulars may be obtained as in the case of particulars of demand (R. 19, H.T., 1853).

Replication and subsequent Pleadings.

The subsequent steps in pleading are the Replication, Rejoinder, Surrejoinder, Rebutter, and so on. The several provisions above mentioned as to pleading several matters, pleading and demurring, &c., apply to all stages of pleadings (sects. 80, 81; and as to Traverses of whole or part of prior pleadings *see* sects. 76, 77, 78, C. L. P. Act, 1852).

Either party may plead in answer to a plea or subsequent pleading, that he joins issue thereon; and such joinder of issue amounts to a denial of the substance of the plea or other subsequent pleading, and an issue thereon (sect. 79, C. L. P. Act, 1859). A power to plead or reply facts which would entitle plaintiff or defendant to relief in equity by way of unconditional injunction, is given by C. L. P. Act, 1854, sects. 83–86.

There is no time limited for replying, rejoining, &c., but the party who has to plead may be called upon by notice to reply, &c., within four days. If he fails to plead, judgment of *non pros*, or by default, may be signed, according as the party in default is plaintiff or defendant.

It may be stated here that judgment by default may be signed by the plaintiff in case of non-appearance of the defendant, or for want of a plea, rejoinder, &c. In such cases, where the plaintiff seeks to recover a debt or liquidated demand in money, *i.e.*, wherever the writ may be specially indorsed, judgment by default is final; C. L. P. Act, 1852, sects. 61, 93. The mode of ascertaining in other cases the amount of damage for which final judgment is to be signed, will be found set out afterwards under the head Judgments.

Issues.

We have now arrived at the stage in a cause where Issues have been raised by the pleadings, either of law by demurrer, or of fact, or both. In the latter case the plaintiff, subject to any direction of the Court, may choose which issues he will have tried first.

When Issues of law are to be determined, the practice is regulated by rules 14-18, H.T., 1853. The case is set down in the special paper of the Court, and copies of the Demurrer Book, with the points intended to be insisted upon, are delivered four clear days before argument to the Judges of the Court, where the argument is to take place. The case is argued by one counsel on each side.

Before judgment leave is given to amend, almost as of course, upon payment of costs, but after judgment amendments are rarely allowed.

Trials of Issues of Fact.

1. *When debt under* 20*l.*—When the *debt* sued for *and* indorsed on the writ does not exceed 20*l.*, and the issue does not involve any difficult question, the Court may order the case to be tried before the Sheriff or any Judge of any civil Court of Record in the county where the action is brought. (3 & 4 Will. 4. c. 42, sect. 17.) A writ of trial is sued out by the party making the application, and left with the Sheriff or Judge two days before the trial. A form of the writ is given in No. 7 of the forms attached to the rules of Hilary Term, 1853. A jury is summoned, and the proceedings are the same as upon any ordinary trial. The Sheriff or Judge returns the writ with the finding of the jury indorsed upon it. Judgment may be signed and execution issue forthwith, unless the person who tried the case certify that the defendant should have time to move, or unless a Judge stay the judgment or execution, 3 & 4 Will. 4. c. 42. sect. 18.

2. *Trial by the Record* is when the issue is as to the existence or non-existence of a record. This issue of *nul tiel Record* is tried *in banc* by the Court; and the record is brought into Court and examined, and judgment given according as it does, or does not, correspond with the statement of it in the pleading. To prevent a defendant from pleading a plea of judgment recovered, merely for the purposes of delay, he is obliged to specify the record in the margin of the plea, R.10, H.T., 1853.

3. *Trial by Judge.*—The parties may by consent in writing, and with the leave of the Court or a Judge, leave the decision of issues of fact to a Judge. The trial takes place in open Court, and the verdict of the Judge in such case has the same effect as the verdict of a jury, save that it cannot be questioned on the ground of being against the weight of evidence. C. L. P. Act, 1854, sect. 1.

4. *Trial by Jury.*—The first step taken by the plaintiff is to make up the *issue*. This is a transcript of the pleadings from beginning to end, and the form of it is given in Form No. 1 of Forms of Proceedings in Schedule to Rules H.T., 1853. The *notice of trial* is often indorsed on the issue, when delivered to the defendants' attorney, though it may be given on a separate paper. In the absence of any order, or of the defendant's being obliged to take *short notice of trial*, which means four days, R. 35, H.T., 1853, the time for giving notice of trial is ten days. (C. L. P. Act, 1852, sect. 97.)

If the plaintiff is not ready to proceed, he may give a notice of countermand. This notice is a four days' notice, unless defendant has to take short notice of trial, when it is a two days' notice, R. 36, H.T., 1853.

If the plaintiff does not proceed to trial, or give notice of countermand in time, he will have to pay the costs of the day. (C. L. P. Act, 1852, sect. 99.)

It will be sufficient to refer to sects. 100 & 101 of C. L. P. Act, 1852, to show the proceedings in case the plaintiff makes default in proceeding to trial. The proceedings in this case, and for a trial by proviso, are substantially the same as in Ireland.

The plaintiff has then to make up a *Nisi Prius Record*, which is on parchment, and contains a transcript of the *issue*. The particulars of demand and set-off are attached to it, and also a copy of the panel of the jurors signed by the Sheriff.

The provisions as to summoning Common and Special Juries are so similar in England and Ireland,—except that in London and Middlesex special juries are struck in a peculiar manner,—(sect. 110, C. L. P. Act, 1852, and R. 45, H.T., 1853,) that it is not thought necessary to set them out. (See C. L. P. Act, 1852, sects. 104–115.)

The attendance of witnesses is secured by writs of *subpœna*, and such writ may be issued, by leave of the Court or a Judge, to compel the attendance of a witness in Scotland or Ireland, 17 & 18 Vict. c. 34. If a witness is in India or any colony, a Mandamus to the tribunals there to examine him may be applied for. If he be out of the jurisdiction, a commission to examine him before commissioners may be obtained. In some cases it may be necessary where a witness is in the jurisdiction, but will not be able to attend at the trial, to apply to have him examined before a Master or some Special Examiner. In the absence of the witness at the trial in any of these cases the deposition taken may be used.

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Interrogatories.

Interrogatories also may be delivered to the opposite party by order of the Court or a Judge; C. L. P. Act, 1854, sects. 51–57. The provisions as to this are the same in England and Ireland.

Discovery and inspection.

The practice also as to obtaining a discovery and inspection of documents before trial, and obtaining an admission of documents, is substantially the same in England and Ireland. An inspection of real or personal property by the jury, or party to the cause, or his witnesses, can be obtained under sect. 58, C. L. P. Act, 1854.

Place of trial.

A cause may be tried, according as the Venue is laid, in the country at the Assizes which are held in each county twice a year, and in some places three times a year, or in London or Middlesex at the sittings. These sittings are held in term and after term, but special juries are not taken in the sittings in term.

The Courts are empowered to hold sittings for trial of issues in fact at any time or times, in term or vacation, except between 10th August and 24th October (C. L. P. Act, 1854, sect. 95), and two Judges may sit at the same time for the trial of causes pending in the same Court. (C. L. P. Act, 1854, sect. 2.)

Proceedings at Trial.

It is not necessary to go through the proceedings at the trial, as they are the same in both countries. The provisions as to the order of speeches of counsel, stamping documents, and evidence, which are found in the English Common Law Procedure Act, 1854, are enforced by the Irish Common Law Procedure Act, 1856.

Verdict. 1. General.

The Verdict of the jury is either *general* for plaintiff or defendant, or *special*, stating all the facts of the case, and leaving the Court to pronounce the proper judgment.

2. Special.

When a *special* verdict is found, it is set down and argued before the Court *in banc*, in the same way as a demurrer, and the judgment of the Court may be reviewed in error.

3. Subject to special case.

Sometimes it is agreed that a verdict shall be found subject to a *special case*, stating the facts. In general, where but few facts are in dispute, the parties at once proceed to give evidence of the facts, and any disputed question of fact is determined by the jury. The case is then settled by the junior counsel on both sides, and is argued *in banc* like a demurrer, and the verdict is finally entered according as the Court directs. Error may be brought on such special case. When the facts are more complicated and many in dispute, the case is often settled by a barrister agreed upon by both parties, who hears the evidence and states a case, which is argued as above.

If the jury cannot agree on a verdict, the Judge discharges them after a certain time.

Postea.

When a verdict is given by the jury the associate makes a minute of it on the *Nisi Prius* Record, and from this the *Postea* is drawn up. The Postea is indorsed on the *Nisi Prius* Record, and continues the history of the proceedings from where the *Nisi Prius* Record terminates, to the conclusion of the trial. (See Forms 3 and 4 in Forms of Proceedings to Rules H. T., 1853.)

Incidental proceedings at a trial.

Large powers of amendment are given by sects. 35, 37, and 222, C. L. P. Act, 1852. Power is

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given to the Judge to adjourn the trial for such time and on such conditions as shall seem fit (sect. 19, C. L. P. Act, 1854). Again, if upon the trial of an issue in fact by a *Judge* alone, it appears to the Judge that the questions arising thereon involve matters of account which cannot be conveniently tried before him, he may order such matters of account to be referred, and proceed to try any other matters in the cause (sect. 6, C. L. P. Act, 1854.) The progress of the trial may also be arrested by the cause being, by consent of parties, referred to arbitration; by the plaintiffs being nonsuited; by the parties agreeing to withdraw a juror, &c.

Bill of exceptions.

A *Bill of Exceptions* may be tendered before verdict, where a party is dissatisfied with the direction of the Judge in point of law, or with his rejection or admission of evidence; and such bill has to be signed and *sealed* by the Judge whose ruling is objected to. This course is less frequently adopted now, since appeals are allowed to a Court of Error in all cases where a rule Nisi to enter a verdict or nonsuit on a point reserved at the trial is refused, or discharged, or made absolute, and also in certain cases of motions for a new trial, on the ground that the Judge has not ruled according to law (sects. 34, 35, C. L. P. Act, 1854).

Applications to Judge for certificates, &c.

Upon the delivery of the verdict, where the case has been tried by a Special Jury, the party who required such Jury must apply to the Judge to certify that the cause was one fit to be so tried, or he will not obtain the costs of such Jury.

Again, if a party desires to have execution earlier than in 14 days, he should apply to the Judge to order speedy execution. An affidavit is generally required upon such application, except in certain cases, as, for instance, substantially undefended actions for liquidated claims.

Again, certificates for *costs* are necessary in certain cases, and where the plaintiff in an action in a Superior Court for an alleged wrong recovers by verdict less than *5l.*, the defendant should apply to the Judge to certify in the form given by the Statute, which will deprive the plaintiff of any costs from the defendant in respect of such verdict (C. L. P. Act, 1860, sect. 34).

Proceedings after Trial to Judgment.

Before considering how judgment is signed and execution issued, it will be well to state some modes in which the result of the trial can be impeached.

1. *Motion for New Trial.*—The general grounds on which this motion is based are as follows: that the Judge misdirected the jury in point of law, or wrongly admitted or rejected evidence; that the damages are excessive; that the verdict was against the weight of evidence, or without any evidence at all, or obtained by surprise. The Court will not grant a new trial on the ground of the verdict being against the weight of evidence where the damages or matter in dispute was less than 20*l.*, and no permanent right was in question. Successive new trials can be granted, but this power is exercised sparingly.

2. *Motion to enter a verdict or nonsuit pursuant to leave obtained at the Trial.*—This motion can only be made, where leave is reserved at the trial, and not as a matter of right.

In every rule Nisi for a new trial, or to enter a verdict or nonsuit, the grounds upon which such rule is granted have to be shortly stated therein (C. L. P. Act, 1854, sect. 33).

3. *Motion for a Trial de novo* (formerly a *venire de novo*).—This proceeding is very similar to that for a new trial, but the following distinction is to be observed. In many cases of an application for a *new trial*, the Court has an absolute discretion to grant or refuse the new trial, or to modify the rule, if granted, by conditions. But in the case of an award of a *trial de novo*, when it is grantable, the Court is *bound* to grant it, nor can it impose any condition on the party claiming the *trial de novo*, nor any terms as to costs.

Error may be brought upon an award of a *Trial de novo*. C. L. P. Act, 1854, sect. 43, R. 24, T.T., 1853.

4 & 5. *Motions in arrest of Judgment*, or for *Judgment non obstante veredicto.*—It is not necessary to state the proceedings on these motions, as they are precisely the same as in Ireland. (See English C. L. P. Act, 1852, sects. 143–145, and Irish C. L. P. Act, 1853, sects. 163–165.)

None of these five motions will be allowed after the expiration of four days from the day of trial, nor in any case after the expiration of the term, if the cause be tried in term; or after the expiration of the first four days of the ensuing term, when the cause is tried out of term, unless entered in a list of postponed motions by leave of the Court, R. 50, H.T., 1853.

The power to appeal in certain cases where a rule is refused, or, if granted, discharged, or made absolute, and the proceedings to appeal are the same in England and Ireland. (See English C. L. P. Act, 1854, sects. 34–44; Irish C. L. P. Act, 1856, sects. 49, 50.)

6. *Repleader.*—This motion is necessary when the parties have so mistaken the true question in the case, that they have raised an issue which will not, for whomsoever it may be found, decide the cause one way or the other. As the verdict cannot remedy this defect, the only remedy is for the Court to award a Repleader. Upon such order the parties begin pleading again from that part of the pleadings in which the mistake was. A Repleader is not granted in favour of the party making the first fault.

Judgments.

Judgments.—Judgments are *final*; or *interlocutory*, as in the case of judgments by default when the claim of the plaintiff is of such a nature that the writ could not have been specially indorsed. Where the judgment is interlocutory, proceedings have to be taken to ascertain the damages for which final judgment is to be signed. The amount is so ascertained before a Master or Sheriff.

1. In actions in which it appears to the Court or a Judge that the amount of damages is "substantially a matter of calculation," the Court or Judge may direct that the amount for which final judgment is to be signed shall be ascertained by a Master. The Master hears the witnesses and indorses upon the rule or order of reference the amount found by him, and delivers the rule or order to the plaintiff, who signs final judgment for that amount as if it had been found by a jury on a writ of inquiry. C. L. P. Act, 1852, sect. 94.

2. Where the damages cannot be so ascertained by the Master, they must be assessed by a jury under a Writ of Inquiry, before the Sheriff of the county in which the venue is laid, unless otherwise ordered, (as in cases of local actions, 3 & 4 Will. 4., c. 42. sect. 22.) But in cases of great difficulty, by leave of the Court or a Judge, the writ may be executed before a Judge of assize or nisi prius.

The proceedings before the Sheriff are the same, as nearly as may be, as in an ordinary action at *nisi prius;* and when the Sheriff has returned his inquisition to the Court, final judgment is given, and may be signed at the expiration of four days after the return (R. 55, H.T., 1853), unless the Sheriff certifies that judgment ought not to be signed till the defendant has had an opportunity of applying to the Court, or unless a Judge think fit to order that judgment and execution be stayed.

In all cases after a verdict or nonsuit, judgment may be signed in term or vacation, and at the expiration of fourteen days from the day of trial, whether the trial was in term or vacation, unless the Judge who tries the cause, or some other Judge, or the Court, otherwise order.

It has been before stated when it can be signed after an inquiry before a Sheriff or a Master.

The proceedings need not be entered on the Roll, unless they are necessary for the purpose of evidence, or of bringing error, or the like; but an *incipitur* thereof may be made upon paper, shortly describing the nature of the judgment. All judgments, whether interlocutory or final, are entered of Record of the day when signed, whether in Term or Vacation. (R. 56, H.T. 1853.)

Costs.

Incident to the judgment are the costs which are awarded to the successful party. The following is a slight sketch of the state of the law as to costs, though the question is considerably complicated by the great number of Acts passed from time to time with respect to costs.

1. *In case of verdict for the plaintiff.*—The principal statutes which have limited the right of the plaintiff to costs, given him by the Statute of Gloucester, are the following:—43 Eliz. c. 6; 21 Jac. I. c. 16; 22 & 23 Car. II. c. 9; 3 & 4 Vict. c. 24, and 23 & 24 Vict. c. 126. (C. L. P. Act, 1860.)

Prior to the passing of the C. L. P. Act, 1860, the law as to verdicts for less damages than *forty shillings* stood as follows:—

In actions on the case for *slanderous words* merely, if the plaintiff recovered less than 40*s.*, he could have no more costs than damages, and the Judge had no power to certify to give him costs. In other *actions on the case, and in actions of trespass*, if the plaintiff recovered less than 40*s.*, he could have no costs whatever, unless the Judge certified that the action was brought to try a right, besides the mere right to recover damages, or that the trespass was wilful and malicious, or unless it was suggested on the roll that the action was for a trespass to land, &c., after notice.

In *other personal actions*, if the plaintiff recovered less than 40*s.*, he was, without reference to the County Courts' Acts, entitled to his full costs, unless the Judge who tried the cause certified to deprive him of them, but this the Judge might do if he thought fit.

By sect. 34, C. L. P. Act, 1860, where the plaintiff in any action for an alleged *wrong* recovers by the verdict of a Jury less than *five pounds*, he shall not be entitled to recover or obtain from the defendant any costs whatever in respect of such verdict, whether given upon any issue tried or judgment passed by default, in case the Judge or presiding officer before whom such verdict is obtained shall immediately afterwards certify on the record, or writ of trial or inquiry, that the action was not really brought to try a right besides the mere right to recover damages, and that the trespass or grievance in respect of which the action was brought was not wilful and malicious, and that the action was not fit to be brought.

This section, it will be observed, only applies to actions for *wrongs;* it extends the operation of 3 & 4 Vict. c. 24, from 40*s.* to 5*l.*; the certificate is a certificate to *deprive*, not to allow, and it must state that "the action was not fit to be "brought" in addition to the other averments.

There are other exceptions to the plaintiff's right to costs caused by special Statutes in special cases, *e.g.*, where a plaintiff had held a defendant to bail without reasonable or probable cause, 43 G. 3. c. 46.; when a plaintiff does not recover the amount sworn to for the purpose of making the defendant a bankrupt, 12 & 13 Vict. c. 106; in actions upon judgments 43 G. 3. c. 46., and the like.

But the main exception from the plaintiff's right to costs is that created by the County Courts Acts, 9 & 10 Vict. c. 95. s. 128.; 13 & 14 Vict. c. 61. ss. 11 & 12.; 15 & 16 Vict. c. 54. s. 4.; 19 & 20 Vict. c. 108. s. 30.; and the result of the different provisions in these Acts is laid down as follows, in Smith's action at law, 7th edition, by Prentice:—

In all actions of *contract* (except for breach of promise of marriage, and except where money is paid into Court, and taken out in full satisfaction of the plaintiff's demand), where the plaintiff recovers a sum not exceeding 20*l.*, and in all actions of *tort* (not being an action for malicious prosecution, or for libel or slander, or criminal conversation or seduction), except in the case of a judgment by default, where the plaintiff recovers a sum not exceeding 5*l.*, the plaintiff gets no costs unless he obtain a certificate from the Judge who tries the cause under sect. 12 of 13 & 4 Vict. c. 61, or obtains an order of the Court or Judge for his costs under sect. 4 of 15 & 16 Vict. c. 54, or s. 30 of 19 & 20 Vict. c. 108.

In the case of a judgment by default in an action of *contract*, where a sum not exceeding 20*l.* is recovered, the plaintiff recovers no costs, unless the Court or a Judge otherwise orders. In the case of a judgment by default in an action of *tort*, the plaintiff is entitled to costs as if these acts had not been passed.

Where the cause is tried, the certificate may be obtained from the Judge at the trial, when it appears to him that the cause of the action was one for which a plaint could not have been entered in the County Court, or when it appears to him that there was sufficient reason for bringing the action in the Superior Court. So when the cause is tried, the order of the Court or a Judge for the costs may be obtained under the 15 & 16 Vict. c. 54. s. 4,—if the action was brought for a cause in which concurrent jurisdiction is given to

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the Superior Courts by the 9 & 10 Vict. c. 95. s. 128—or, if the action was removed from the County Court by *certiorari*—or, if there was sufficient reason for bringing the action in the Superior Court.

There is also a special exception created by the London Small Debts Acts, which need not be further mentioned here.

2. Defendant's right to costs.

2. *In case of verdict for Defendant.*—The defendant's right to costs, if he succeeds, is mainly based on the Statutes 23 Hen. 8. c. 15, and 4 Jac. 1. c. 3, and this right is subject to less exceptions than the plaintiff's.

Where there are several defendants, any defendant, if acquitted, is entitled to his reasonable costs in all actions, unless the Judge certify to deprive him of them, 3 & 4 W. 4. c. 42.

3. Costs of several issues.

3. *Where there are several issues.*—This subject is now regulated by C. L. P. Act, 1852, sects. 81, 145, and R. 62, H. T. 1853.

By this Statute and Rule the costs of any issue, whether of law or of fact, follow the finding or judgment upon such issues, and are adjudged to the successful party, whatever may be the result of the other issue or issues.

If there are several issues, and one is found for the plaintiff and the other for the defendant, if that found for the plaintiff entitle him to recover his debt or damages or any part of them, he will be entitled to the postea, and general costs of the cause. But the defendant will be entitled to the same, if the defence raised upon the issue found for him furnishes a defence to the whole action.

Costs of the cause.

Costs of the trial.

With regard to the costs of the trial, by R. 62, H. T. 1853, if the party entitled to the general costs of the cause obtain a verdict or any material issue, he will also be entitled to the general costs of the trial; but if no material issue in fact be found for the party otherwise entitled to the general costs of the cause, the costs of the trial shall be allowed to the opposite party.

Double and treble costs.

4. In many cases double and treble costs were given by Statute; but by 5 & 6 Vict. c. 97. sects. 1 & 2, so much of any enactment in any Act as allows double or treble costs, or any other than the usual costs between party and party to be recovered, is repealed. The parties entitled under the last-mentioned Acts to such double or treble costs, receive such full and reasonable indemnity as to all costs, charges, and expenses as shall be taxed by the proper Officer in that behalf.

Error on judgment for costs.

5. It has already been pointed out under the head "error" that in no case shall error be brought for any error in a judgment with respect to costs, but the error may be amended.

Taxation of costs.

6. It is not thought necessary to go into details as to taxation of costs.

In *England* by 1 Vict. c. 30, sect. 3, the Masters of the respective Courts of Law are authorized to tax all costs in matters of a civil nature in any of the Courts or in the Exchequer chamber, indiscriminately, although the costs may not have arisen in respect of business done in the Court to which such Masters may belong.

When a notice to tax costs is necessary, one day's notice of such taxing, together with a copy of the bill of costs and affidavit of increase (if any), shall be given, R. 59, H. T. 1853. But notice of taxing costs is not necessary when the defendant has not appeared in person, or by his attorney or guardian, R. 61, H. T. 1853.

There are special directions given to the Masters of the Courts in Hilary Term, 1853, as to the fees to be allowed; and it may be stated, generally, that there is a higher and a lower scale upon which costs are to be taxed, and that by directions 7 and 8, regulations are made for taxing on the lower scale the plaintiff's costs in actions on contract, where a writ of trial might have issued, and where the sum recovered or paid into Court, and accepted by the plaintiff, shall not exceed 20*l.*

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Execution.

Writs of Execution are *judicial* Writs, and those in ordinary use are the Writs of *Fieri Facias*, *Capias ad satisfaciendum*, and *Elegit*. A party is entitled to issue execution in fourteen days after the verdict or nonsuit, unless otherwise ordered, whether the cause is tried in term or in vacation. If speedier execution is wanted, an application must be made to a Judge, and an affidavit is generally required except in an undefended action for a liquidated demand.

It is not necessary here to go into a detailed account of the forms of writs and their endorsements. It is sufficient to say that the sum actually due and to be levied must be indorsed on the writ, though the whole amount of the judgment appears in the body of the writ (R. 76 H.T., 1853); that the writ only remains in force for one year from the teste of the writ, unless renewed (C. L. P. Act, 1852, sect. 124); that it may be made returnable immediately after the execution thereof, or on a day certain in term (3 & 4 Will. 4. c. 67, s. 2, and R. 72 H.T. 1853).

The provisions as to execution for the specific return of a chattel detained, and as to the power of a judgment creditor to attach debts due to the judgment debtor for the purpose of satisfying the judgment, are precisely the same in both countries. In England, however, in the case of attachment of debts, the following additional powers are given to the Judges by C. L. P. Act, 1860, sects. 28–30. A Judge may refuse to interfere in proceedings to attach, where from the smallness of the amount to be recovered, or of the debt to be attached, or otherwise, the remedy would be worthless or vexatious; and where the garnishee suggests that the debt sought to be attached belongs to a third person, the Judge may order such third person to appear before him, and he may, after hearing him, bar the claim of such person, and make what order he thinks fit.

Attachment of debts.

Proceedings to revive Judgments and other Proceedings by and against Persons not Parties to the Record.

Revivor

During the lives of the parties to a judgment, or those of them during whose lives execution might, before the C. L. P. Act 1852, issue within a year and day without a *scire facias*, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment. C. L. P. Act, 1852, sect. 128.

The proceedings to revive are so very similar in both countries that it is not necessary here to state more than that such proceedings are by way of suggestion or writ of revivor; and that upon the writ of revivor the proceedings are the same as in an ordinary action.

If a judgment is less than ten years old, a writ of revivor will be allowed without any rule or order; if more than ten years old, not without a

rule of Court or a Judge's order, nor, if more than fifteen, without a rule to show cause.

Scire Facias.

Writs of scire facias are still necessary in certain cases, and by sect. 132, C. L. P. Act, 1852, it is enacted that all writs of scire facias issued out of any of the superior courts of law against bail on a recognizance; ad audiendum errores; against members of a joint stock company or other body, upon a judgment recorded against a public officer or other person sued as representing such company or body, or against such company or body itself; by or against a husband to have execution of a judgment for or against a wife; for restitution after a reversal in error; upon a suggestion of further breaches after judgment for any penal sum, pursuant to the statute passed in the session holden in the eighth and ninth years of the reign of King William the Third, or for recovery of land taken under an elegit, shall be tested, directed, and proceeded upon, in like manner as writs of revivor.

There are some few writs of scire facias, though seldom issued, which are not included in this enactment, and it is doubtful how these writs are to be tested and proceeded on. See Chitty's Archbold, 1078.

Effect of Death, Marriage, and Bankruptcy of Parties.

The enactments in the Common Law Procedure Acts of both countries are the same, so that nothing need be stated under this head.

Error.

The Proceedings to Error, as regulated by the Common Law Procedure Acts, are the same in both countries. The minor differences in such proceedings will be pointed out in the joint Report.

Ejectment.

Proceedings in Ejectment are entirely regulated by the C. L. P. Act, 1852, sects. 168–221; the C. L. P. Act, 1854, sect. 93; the C. L. P. Act, 1860, sects. 1–11; Rules, 112–114, H.T., 1853. They may be considered under the following heads:

1. In ordinary cases.
2. By Landlord, for non-payment of rent.
3. By Landlord, on the determination of a tenancy.
4. By Landlord, where right of entry accrues, or tenancy expires, in or after Hilary or Trinity Terms.
5. By Mortgagee.
6. Action for mesne profits.

1.—*Ejectment in ordinary cases.*

The proceedings under this head are, in substance, so similar in England and Ireland that a short statement will suffice.

A Writ is issued directed to the persons in possession by name, and to all persons entitled to defend the property claimed, which is described in the writ with reasonable certainty. It states the names of all the persons in whom the title is alleged to be, and requires the persons, to whom it is directed, to appear within 16 days after service of the writ, to defend the possession of the property sued for, or such part thereof as they may think fit; and contains a notice that in default of appearance they will be turned out of possession. It remains in force for three months, and is served in the same manner as an Ejectment was before the Act, *or* in such manner as the Court or Judge shall order, and in case of vacant possession by posting a copy of the writ on the door of the dwelling-house, or other conspicuous part of the property. The tenant to whom the copy of the writ is delivered, or to whose knowledge it comes, must forthwith give notice thereof to his landlord or his bailiff, under penalty of forfeiting the value of three years' rent of the premises.

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Appearance.

The persons named in the writ, or either of them, may appear, and so may any other person, by leave of a Judge, on filing an affidavit showing that he is in possession by himself or his tenant (C. L. P. Act, sect. 172). A person appearing as landlord must state in his appearance that he so appears (sect. 173).

The person appearing may, by notice served on the plaintiff's attorney within four days after appearance, limit his defence to part only of the property mentioned in the writ (sect. 174). And in case of an action by a Joint Tenant, Tenant in Common, or Coparcener, any Joint Tenant, &c., in possession may give notice that he or she defends as such, and admits plaintiff's right to a share, but denies ouster of plaintiff. This notice is entered in the issue, and the question of ouster is tried at the trial of the issue (sects. 188 and 189).

Judgment in default of appearance.

If no appearance is entered, or only an appearance limited to part, the plaintiff may sign judgment for the whole or the part to which the defence does not apply. But an affidavit of the service of the writ has to be filed, or, where personal service has not been effected, a Judge's order authorizing the signing of the judgment has to be obtained before such judgment can be signed. (Sect. 177; and R. 112, H.T., 1853.)

Issue.

When an appearance has been entered, an issue is made up, *without pleadings*, setting forth the writ, appearance, and notices, if any, and directing the sheriff to summon a jury. (Sect. 178.)

Trial and verdict.

The plaintiff makes up a record and proceeds to trial in the same way as in other actions, and the particulars of the claim and defence, if any, are annexed to the record. The question at the trial is (except in particular cases, *e.g.*, where question of *ouster* has to be tried), whether the statement in the writ of the title of the claimant is true or false, and if true, then which claimant, if more than one, is entitled, and whether to the whole or what part. (Sect. 180.)

A special verdict may be found, and either party may tender a bill of exceptions (sect. 184), and Error may be brought (sect. 208.) If the defendant does not appear at the trial, the plaintiff is entitled to recover without any proof of his title. If the defendant appears, but the plaintiff does not, the plaintiff will be nonsuited, and the defendant will be entitled to his costs (Sect. 183.)

Judgment and execution.

On a finding for the plaintiff, judgment may be signed, and execution issue by a writ of *habere facias possessionem*, to which a *fi. fa.* or *ca. sa.* for the costs may be added, for the recovery of possession of the property which the plaintiff is found to be entitled to, and for costs, within such time, not exceeding the fifth day of term after the verdict, as the Court or Judge shall direct; and if no

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order be made, then on the fifth day in term after the verdict, or within 14 days after such verdict, whichever shall first happen. The defendant, if he succeeds, may, within the same time, sign judgment for his costs of suit and issue execution for the same. (Sects. 185, 186, and R. 29, T.T. 1853.)

2.—*Ejectment by Landlord for Forfeiture by Non-payment of rent.*

If a tenant forfeit his term by non-payment of rent, the landlord may proceed to recover possession of the premises by ejectment. If there is a sufficient distress on the premises, the proceeding must be at common law; if there be not, the proceeding may be under C. L. P. Act, 1852, sect. 210.

1. *At Common Law*, before the action is commenced, a demand must be made of the rent, unless dispensed with by consent of the parties. There is such great strictness required in making this demand, that this mode of proceeding, where there is sufficient distress on the premises, is seldom adopted.

2. *Under Common Law Procedure Act*, 1852, *sects.* 210-212.—Under these sections where there is a right reserved to a landlord of re-entry for non-payment of rent, and there is half a year's rent in arrear, and no sufficient distress on the premises, the landlord may bring ejectment for recovery of possession *without making any re-entry or any demand for payment of the rent.*

The writ is the same as in an ordinary action of ejectment, and is served in much the same manner, and the subsequent proceedings are the same, except that in case of non-appearance by defendant, an affidavit must be made, stating that half a year's rent was due, and that no sufficient distress was to be found on the premises, and that the lessor had power to re-enter; and in case of appearance, proof must be given of such facts, and of the service of the writ. The plaintiff may recover mesne profits at the trial down to the time of verdict. (Sect. 214.)

If the lessee or his assignee, before the trial, pay or tender to the landlord, or pay into Court the rent in arrear, and costs, the proceedings in ejectment cease; and if the lessee obtains relief as herein-after mentioned, he holds the demised land without any new lease. (C. L. P. Act, sect. 212.)

Relief against forfeiture for non-payment of rent.

This brings us to the consideration of a very important change made by the C. L. P. Act, 1860. Formerly, a lessee who had suffered judgment in ejectment and execution thereon, without paying the rent and arrears, together with costs, and who did not proceed for relief in Equity within six months after such execution, was barred from all relief in Law or Equity, other than by bringing error to reverse the judgment; and the landlord held the premises discharged from the lease. But by the C. L. P. Act, 1860, sect. 1, in the case of any ejectment for a forfeiture brought for non-payment of rent, the Court or a Judge shall have power, upon rule or summons, to give relief in a summary manner, up to and within the like time after execution executed, and subject to the same terms and conditions in all respects, as to payment of rent, costs, and otherwise, as in the Court of Chancery; and if the lessee shall upon such proceeding be relieved, he shall hold the demised lands according to the lease thereof made, without any new lease.

An appeal lies from any such order of a Judge to the Court and from the Court to a Court of Error as in ordinary cases. (C. L. P. Act, 1860, sects. 4–11.)

It may be mentioned here that in case of ejectment for a forfeiture for breach of covenant to insure, relief can be given in like manner and subject to a like appeal, in all cases in which such relief can be obtained in the Court of Chancery under 22 & 23 Vict. c. 35, and upon such terms as would be imposed in such Court. (C. L. P. Act, 1860, s. 2.)

When such relief is granted, a minute thereof is to be made by indorsement on the lease or otherwise.

3. *Ejectment by Landlord upon the Termination of a Tenancy.*

By C. L. P. Act, 1852, s. 213, where the term or interest of any tenant holding under a lease or agreement in writing any lands, tenements, or hereditaments, for any term or number of years certain, or from year to year, shall have expired, or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing, made and signed by the landlord or his agent, and served personally upon, or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord thereupon proceeds by action of ejectment for the recovery of possession, he may at the foot of the writ in Ejectment, address a notice to such tenant or person requiring him to find bail, if ordered by the Court or Judge.

The writ is in the usual form, and served as in ordinary cases, and the defendant should appear. Upon the appearance of the party, on an affidavit of service of Writ and Notice, the landlord upon producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, may apply to the Court or a Judge for a rule or summons for such tenant or person to show cause, why he should not enter into a recognizance by himself and two sufficient sureties, in a reasonable sum, conditioned to pay the costs and damages which shall be recovered by the claimants in the action. The Court or Judge may make the same absolute in the whole or in part, and order such tenant or person, within a time to be fixed, to find such bail, and in case the party shall neglect or refuse so to do, and does not induce the Court or Judge to enlarge the time for obeying the same, then the lessor or landlord filing an affidavit that such rule or order has been made and served, and not complied with, may sign judgment for recovery of possession and costs of suit.

When the time given to the tenant to put in bail has expired, the issue is made up, and the other proceedings to trial are the same as in ordinary cases.

If it is proved on the trial of *any* ejectment by a *landlord against a tenant*, that he or his

attorney has been served with due notice of trial, the plaintiff may, whether the defendant shall appear upon such trial or not, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment, go into evidence of the mesne profits thereof from the day of the expiration of the tenant's interest in the same, down to the time of the verdict given in the cause, or to some preceding day, to be specially mentioned therein; and the jury on the trial, finding for the claimant, in such case give their verdict both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for mesne profits; and the landlord has judgment for the recovery of possession and costs and such mesne profits. Provided always, that nothing herein-before contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict, or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment. (Sect. 214, C. L. P. Act, 1852.)

By sect. 215, in all cases in which security is given as aforesaid, if a verdict passes for the plaintiff, and it does not appear to the Judge that the verdict is contrary to the evidence, or that the damages are excessive, such Judge is not, except by consent, to make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant find security, by the recognizance of himself and two sufficient sureties, in such reasonable sum as the Judge shall direct, conditioned not to commit any waste, or act in the nature of waste, or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may be thereupon, from the day on which the verdict is given to the day on which execution shall finally be made upon the judgment, or the same be set aside, as the case may be. But this recognizance will be discharged if error is brought upon such judgment, and the plaintiff in error is bound in the manner provided by the Act.

4. *Ejectment by Landlord where Right of Entry accrues, or Tenancy expires, in or after Hilary or Trinity Terms.*

It need only be mentioned under this head that the proceedings are regulated by C. L. P. Act, sect. 217, the object being to enable the landlord to try at the ensuing Assizes. The writ, which must be served within ten days after the expiration of the tenancy or accrual of right of entry, commands appearance within ten days; and it is sufficient to give six clear days notice of trial. The proceedings are the same as in an ordinary ejectment.

5. *Ejectment by Mortgagee.*

In ejectment by mortgagee against mortgagor, the latter may, if no suit is pending in Equity to foreclose or redeem the property, bring into Court the mortgage money, interest, and costs in satisfaction of the mortgage; and the Court may compel the mortgagee to reconvey and deliver up all deeds, &c. But this does not extend to cases where the right of redemption is controverted, or when the premises are charged with other principal sums than those appearing on the mortgage. (C. L. P. Act, sects. 219–220.)

6. *Action for Mesne Profits.*

It has been already shown when the mesne profits down to the verdict may be recovered in the action of ejectment; but in other cases, the plaintiff, after the judgment and entry, may bring this action, and the Jury may give, besides the rent or annual value of the premises, extra damages as a compensation for plaintiff's trouble, &c. The plaintiff may also recover profits which accrued previously to the time stated in the writ in ejectment, if he had title to the premises at the time and the defendant was in possession.

In all other respects the proceedings in this action are the same as in ordinary actions.

Replevin.

An action of Replevin may be commenced in a Superior Court in the form applicable to personal actions, 19 & 20 Vict., c. 108, sect. 65; and this applies to all cases of replevin, and not merely to cases of replevin of goods distrained for rent or damage feasant. (C. L. P. Act, 1860, sect. 22.)

The replevisor, if he wishes to commence his action in a Superior Court, must at the time of replevying give security to the registrar of the County Court of the district in which the distress is taken.

The action must be commenced within one week from the date of the replevin bond, and must be prosecuted without delay. The replevisor must, unless judgment be obtained by default, prove that he had good ground for believing that the title to some hereditament or to some toll, market, or franchise, was in question, or that the rent or damage in respect of which the distress was made exceeded 20*l.*

The defendant must appear as in ordinary cases; and, upon appearance, the plaintiff declares. The declaration states in general terms the taking of the goods, but the pleadings differ in name from those in other actions. If the defendant insists that the goods were lawfully taken by him in his own right, the pleading is called an *avowry;* if in the right of another, it is called a *cognizance.* The plaintiff then pleads a plea in bar, and the defendant replies and so on; and a plaintiff in replevin may now pay money into Court. (C. L. P. Act, 1860 sect. 23.)

The judgment for the plaintiff awards damages for the unlawful taking; the judgment for the defendant is, that he have a return of the goods taken, and if the distress was for rent, he recovers the arrears.

The proceedings in an action of replevin removed by Certiorari to a Superior Court are almost exactly the same as when the action is commenced there.

I respectfully submit this Statement to Her Majesty's Commissioners.

(Signed) H. T. HOLLAND.

II.—PRACTICE AND PROCEDURE IN EQUITY.

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Preliminary statement of Messrs. Barber and Jellett.

II.—1. Preliminary Statement of Messrs. Barber and Jellett.

Upon proceeding in compliance with the request of Her Majesty's Commissioners to draw up a concise statement of such parts of the practice and procedure of the Superior Courts of Equity as are peculiar to England, and of such parts as are peculiar to Ireland, we found that the practice and procedure of the two countries originally similar, had, by the effect of modern legislation, become almost entirely different, and that such a statement as we had been requested to furnish would necessarily involve a general statement of the modern practice and procedure in each country. We have, therefore, drawn up separately, as concisely as possible, statements of the practice and procedure of the Court of Chancery in England and in Ireland, omitting, as a general rule, such portions of practice and procedure as are still common to both countries. We have endeavoured to frame these statements in such a manner as that any one familiar with the practice prevailing in one country may be able, by a perusal of the statement relating to the other country, at once to recognize and appreciate the points of difference.

To these separate statements we have appended a summary of the principal differences of practice and procedure, in which these differences are shortly pointed out and contrasted with each other.

We respectfully submit our statements to the consideration of Her Majesty's Commissioners.

(Signed) C. Chapman Barber.
24th June 1862. Hewitt P. Jellett.

II.—2. Mr. Barber's Statement on the Practice and Procedure of the Court of Chancery in England.

Statement of Mr. Barber as to England.

The practice and procedure of the Court of Chancery in England may be conveniently considered in the following order:—

I. The procedure in an ordinary suit down to the decree.
II. Procedure after a decree until the final order.
III. Special practice in particular kinds of suits and proceedings.
IV. Interlocutory applications.
V. Revivor and supplement.
VI. The mode of enforcing decrees and orders.
VII. Re-hearings and appeals.
VIII. Summary statutory jurisdiction of the Court.

I.—The Procedure in an ordinary Suit down to the Decree.

A Suit is commonly commenced by a Bill entitled thus:—

In Chancery.
Lord Chancellor.
Vice Chancellor (*name of Vice Chancellor.*)
or
Master of the Rolls.
Between *A. B.*, Plaintiff.

C. D. & *E. F.*, Defendants.

The bill, the draft of which must be settled and signed by counsel, is (unless under exceptional circumstances) addressed to the Lord Chancellor. It contains a statement in paragraphs numbered consecutively, of the facts on which the plaintiff relies as constituting his title to relief, and concludes by a prayer, asking specifically such relief as the plaintiff conceives himself entitled to, and also asking general relief. The names of the defendants are repeated in a note at the foot of the bill.

When a suit is instituted on behalf of the Crown or of persons under its peculiar protection, as, for instance, the objects of a public charity, the pleading by which the suit is commenced is called an information. The Attorney-General or Solicitor-General, technically called the informant, is then the complainant. If the suit concerns merely the rights of the Crown, and in some other cases, which it is unnecessary for the present purpose to particularize, the Crown officer alone prosecutes the suit. More frequently, however, the suit is instituted at the instance of some private individual, commonly called the relator, who has the conduct of the suit, and who is responsible to the defendants for such costs, if any, as the Court may think fit to award to them.

In some cases, as, for instance, when a private right connected with a public object is sought to be enforced, the remedy is by an information and bill combined.

Generally speaking, all persons who are interested in the subject-matter of the litigation should be parties to the bill either as plaintiffs or defendants, but the strict rule has been considerably modified by the statute of 1852 (15 & 16 Vict. c. 86.) The general effect of the relaxation may be stated as follows:—

(*a*) Where there is property to be administered under a will, an intestacy, or a deed or other instrument of trust, any one person interested in the property may obtain a decree for its administration by the Court without making the other persons beneficially interested parties.
(*b*) In cases of suits for the protection of property, one person may sue on behalf of himself and all others interested.
(*c*) Where real estate is vested in trustees, the trustees, in reference to adverse litigation for or against the trust estate, represent their *cestuis que trust*, in like manner as executors or administrators represent persons beneficially interested in the personal estate of deceased persons.

Formal parties.

Notwithstanding these provisions it may still be necessary or convenient for a plaintiff, in some cases, to make defendants to a bill persons from whom no account or other direct relief is sought. In such cases he may, as against such persons, merely pray that they may, upon being served with a copy of the bill, be bound by the proceedings in the cause and adopt the special course with regard to serving them, which will be mentioned under the head of "Service."

Selection of Court.

The draft of the bill being completed, and the plaintiff or his solicitor having determined the particular branch of the Court to which the suit shall be attached, the bill is marked accordingly.

Printing and filing Bill.

The bill so marked is printed upon paper and in type prescribed by the orders of the Court, and a printed copy is taken to the Office of the Clerks of Record and Writs, and there filed. The copy must have indorsed upon it the name, firm, and place of business of the solicitor filing it, and if his place of business is more than three miles from the Record and Writ Office, an address within those limits must be added, where notices and proceedings may be served. If the plaintiff sues in person, he must indorse his own name and residence, and if the latter be beyond the three miles, an address for service within that distance. In certain pressing cases (viz., where an *Injunction* or a writ of *Ne exeat regno* is prayed, or it is sought to make an infant a ward of Court) a written copy of the bill may be filed in the first instance upon an undertaking to file a printed copy within 14 days.

Transfer of causes.

It may here be observed that although the plaintiff has the right in the first instance of selecting the Court to which the suit is to be attached, the Lord Chancellor has the power of transferring any cause from the paper of any of the Vice-Chancellors to that of any other of the Vice-Chancellors; and that the Lord Chancellor and the Master of the Rolls have power to transfer causes to or from the paper of any of the Vice-Chancellors, from or to that of the Master

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of the Rolls, and that these powers are frequently exercised.

After the bill has been filed the plaintiff proceeds to serve the defendants with copies, previously procuring such copies to be authenticated with the stamp of the Record and Writ Office.

Service.

Such service is effected either personally on each defendant, or by leaving the copy with some servant or member of his family at his dwelling house, or usual place of abode. Each copy served contains an indorsement requiring the defendants to enter an appearance within 8 days, and informing them that if they fail to do so the plaintiff may enter an appearance for them, and that they, the defendants, will be liable to be arrested and imprisoned, and to have a decree made against them in their absence. Regular service is, however, in a large number of cases dispensed with on the solicitor of the defendants giving to the plaintiff's solicitor an undertaking to appear.

Service upon formal parties.

As regards merely formal parties whom the plaintiff seeks to bind by serving them with a copy of the bill, the service must be within 12 weeks after the filing of the bill, and the usual indorsement is omitted from the copy of the bill served, the intention being that the defendant should not appear unless he himself is desirous of doing so.

Appearance.

Where parties are served in the ordinary way, or an undertaking to appear is given, appearances are commonly entered in due time in the Record and Writ Office. Every appearance and indeed every proceeding filed at the Record and Writ Office must have an address for service within three miles from the office. A formal defendant merely served with a copy of the bill and not required to enter an appearance (though under no obligation to appear), may, if he thinks fit (as of course within 12 days after service, and subsequently with special leave of the Court), enter a common appearance, and if he does so, the suit will be prosecuted against him in the ordinary way, but the costs occasioned thereby are paid by the party appearing unless the Court otherwise directs. A formal defendant may, however, take a course intermediate between that of appearing simply and not appearing at all, by entering a special appearance "for the purpose of being "served with notice of all proceedings in the Suit," in which case he does not become a complete party to the suit, but is merely served with notice of all proceedings. This special appearance is entered (if at all) within the same time, and subject to the same liability as to costs occasioned thereby, as in the case of a common appearance by a formal defendant.

Practice as to service upon formal parties not much followed.

It may here be observed that the practice of merely serving formal parties with a copy of the bill without requiring them to appear, has been much less resorted to since it has become unnecessary to call for an answer from each defendant made a party in the ordinary way. The practice, however, is still useful and convenient in some cases.

Substituted service.

Where a defendant is resident out of the jurisdiction, or evades service of the bill, the Court will frequently order service to be substituted upon some person shown to be the agent of the defendant for the purposes of the suit, or (perhaps) for a purpose connected with the suit. The principle upon which the Court acts in directing substituted service is to sanction such service as there is reasonable ground for believing will come to the defendant's knowledge. In certain cases, substituted service is ordered almost as of course. For instance, where a defendant in equity, resident out of the jurisdiction, is suing the plaintiff in an action at law, service is commonly substituted on the attorney at law, and where the bill to which appearance is sought is a cross bill merely, service is similarly substituted on the solicitor acting for the defendant as plaintiff in the original bill. When substituted service is so made, a copy of the order authorizing substitution should be served at the same time.

Where a defendant is out of the jurisdiction, the Court upon application supported by evidence, showing in what country or place the defendant may probably be found, may order a copy of the bill (and if an answer is required, a copy of the interrogatories) to be served in such place or country as the Court shall think fit; and the order, if made, limits a time for appearance after service, and a time for pleading, answering, or demurring. In serving the bill, a copy of the order must be served at the same time.

It is a matter for the discretion of the Court to grant or withhold the order, but the order is commonly obtained without difficulty.

Where a defendant (not being an infant or a person of weak or unsound mind), who is duly served either within or without the jurisdiction, fails to appear within the time limited for appearance, the plaintiff may, as of course when the service is within the jurisdiction, and he takes that step within three weeks after the time for appearance has expired, and in other cases with leave of the Court obtained on special application, enter an appearance for the defendant.

If the particular defendant whom it is desired to serve cannot be found, and it can be shown that he has been within the jurisdiction at some time not more than two years before bill filed, and that there is just ground for believing he has gone out of the realm, or absconded to avoid process, an order may be made directing his appearance within a certain day, and a copy of the order is then published in the London Gazette and otherwise as directed by the Court, together with a notice to the effect that if the plaintiff does not appear by the time named in the order, the plaintiff may enter an appearance for him; and on proof of publication and non-appearance, the Court subsequently authorizes the plaintiff to enter an appearance.

The entry of an appearance for the defendant by the plaintiff in some or one of the modes adverted to, is principally useful as limiting the time within which a demurrer may be filed to the bill, which runs from the entry of the appearance; and as a preliminary step towards taking the bill *pro confesso* against the defendant. The plaintiff however, notwithstanding his having entered an appearance for the defendant, unless and until he has obtained an order to take the bill *pro confesso* against the defendant, is still under an obligation to serve the defaulting defendant personally, or at his dwelling house or office, with notice of the subsequent proceedings in the cause, an obligation which he can only discharge by obtaining special leave from the Court, that notice in the Gazette shall be good service. The defendant, on the other hand, cannot take any step in the cause without first entering an appearance in the ordinary way; and though he may do this, as of right, this appearance

does not affect the prior proceedings or prejudice any right acquired by the plaintiff.

Where a defendant is an infant or a person of weak or unsound mind not so found by inquisition, some relative is commonly induced to undertake the defence, and is appointed guardian *ad litem*, but in default of this, the Court upon the application of the plaintiff orders that one of the solicitors of the Court (usually the solicitor to the Suitors' fund), be assigned as guardian, and the defendant then appears, and defends by the guardian so appointed.

The defendant may, within 12 days after appearance, entered by or for him, demur to the bill. The grounds upon which a demurrer may be filed are various, and it is unnecessary for the present purpose to specify them. The most common cause of demurrer is that the plaintiff has not, by his bill, shown any title to relief. The demurrer must be signed by counsel. It is engrossed on parchment, and filed at the Record and Writ Office by the solicitor for the demurring party, who must the same day (an obligation which applies equally in the case of other pleadings, such as plea, answer, or replication,) give notice to the plaintiff's solicitor of its having been filed.

Either party is at liberty to set the demurrer down for argument immediately. The non-exercise of this option by the demurring party brings with it no liability on his part, but should the plaintiff abstain for 12 days to set down a demurrer to the whole bill, or for 3 weeks to set down a demurrer to part of the bill, the effect (unless in the meantime he should have obtained and served an order to amend his bill) is the same as if the demurrer had been allowed on argument. Assuming, however, the demurrer to be duly set down for hearing, it is argued in Court on an early day, when the Court either allows or overrules the demurrer. If it is allowed, and the Court does not give leave to amend the bill, the suit is at an end as to the demurring defendant. If the demurrer is overruled, or leave is given to amend the bill, the suit proceeds.

If the bill states a case for relief, but a defendant has a short simple defence to the bill, *e.g.*, the Statute of Limitations, or a release, or that he is a purchaser for valuable consideration without notice, he may raise the defence by means of a plea, instead of meeting in detail the allegations contained in the bill. A plea is signed by counsel, engrossed on parchment, and filed at the Record and Writ Office. Except when relating to matters of record, it is put in on the oath of the defendant. In reference to a plea, two questions necessarily arise, *viz.*, (1), whether it is a sufficient answer in law? and, (2) whether it is true in fact? The first question is disposed of by setting the plea down for argument before the Court, when the Court decides whether, assuming the *truth* of the plea, it is or not an answer to the case made by the bill. In the former case it is allowed, in the latter overruled. Technically the allowance of a plea only determines its sufficiency in *law*, and leaves the question of its *truth* to be litigated by the parties going into evidence upon the short point raised by the plea. In most cases, however, upon a plea being allowed, the bill is out of Court, for the plea having been put in upon oath, or being capable of proof by record, is almost invariably true. If, therefore, the plea is in law an answer to the plaintiff's case, it is generally useless for the plaintiff to continue the contest. When a plea is overruled, the order overruling it commonly directs the plea to stand as an answer to the bill, with liberty for the plaintiff to call for a fuller answer as to any matters which may not be sufficiently met by the plea.

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The duty of a plaintiff in reference to setting down a plea which has been filed is analogous to that above explained with regard to demurrers, that is, unless the plaintiff takes issue on the question of *truth* by undertaking to reply, he must set the plea down within 3 weeks. If he neither undertakes to reply nor sets down the plea, nor serves an order for leave to amend, within that time, the effect is the same as if the plea had been allowed on argument. And where the plea is to the whole bill the plaintiff is viewed as having declined to try the question of truth, and the defendant, who has pleaded, may obtain, as of course, an order to dismiss the bill with costs.

Setting down pleas.

Assuming the defendant neither to demur nor plead to the whole bill, or to do so unsuccessfully, the suit proceeds according to what may be called the ordinary course, as being that which prevails in the larger number of causes.

According to the practice of the English Court, the plaintiff has a right to require each defendant to answer, upon oath, interrogatories in reference to the subject matter of the suit, and generally, though not always necessarily, founded on allegations contained in the plaintiff's bill. These interrogatories are numbered consecutively; they are settled and signed by Counsel. One set of interrogatories is usually filed for the examination of all the defendants required to answer, though each defendant may not be required to answer every interrogatory, and a note is added at the foot specifying the interrogatories which each defendant is required to answer. The interrogatories must be filed, and copies thereof, omitting those which are not required to be answered by any particular defendant or set of defendants, are delivered to the defendants respectively required to answer within certain times prescribed by the orders of the Court.

Interrogatories.

Under the old practice the plaintiff almost always, as a matter of course, interrogated the defendant respecting the documents in his possession or power relating to the matters alleged by the bill. This practice has not been abolished, and is still not unfrequently followed; but, under the modern practice, the discovery as to documents is commonly obtained from the defendant by summary proceeding at chambers, as follows:—

Production of documents.

The plaintiff takes out a summons and obtains thereunder an order that the defendant do, within a given time after service, make, in a form prescribed by the practice, an affidavit as to the documents in his possession or power relating to the matters in question in the suit, and directing him to produce, for the inspection of the plaintiff, such of the documents admitted to be in his possession as he does not, by the affidavit, object to produce. If the defendant, by his affidavit, objects to produce any of the documents admitted to be in his possession, and the plaintiff is advised that the objections are untenable, he applies again, by summoning the defendant at chambers for production of such documents, and in such case the summons is generally adjourned to be argued before the Court. If the plaintiff considers the affidavit evasive or insufficient, he applies by sum-

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mons at chambers, that the defendant may make a further affidavit, and an order to that effect is accordingly made, if in the opinion of the Judge, either at chambers or in Court, upon the summons being adjourned into Court, the affidavit is insufficient. This summary procedure may be resorted to by the plaintiff as soon as the defendant has appeared, and may be prosecuted whether the defendant has or has not been required to answer; and if required to answer whether he has or has not been interrogated as to documents.

When the interrogatory filed for the examination of the defendant in answer to the bill includes an interrogatory as to documents, and such interrogatory has been fully answered, the practice is to apply at chambers for production upon the admissions in the answer.

Answer.

Next as regards the ordinary course of defence. The plaintiff having filed and served interrogatories, the defendant is compelled to put in an answer within a time limited by the orders of the Court, which is frequently extended by special order. The answer, the draft of which must be signed by counsel, does not at the commencement or in the body of it appear to be made on oath. It is, however, sworn in the same manner as an affidavit, except that the oath actually administered is of a qualified kind, i. e., the person answering swears that what is contained in the answer, so far as concerns his own act and deed, is true to his own knowledge, and so far as relates to the acts and deeds of other persons is believed by him to be true. The answer so sworn is filed in the Record and Writ Clerks' Office. The answer filed may be either printed or written. Any schedules annexed to the answer must be filed with it, whether the answer actually filed is printed or not. Printed copies are made of the answer for the use of the parties to the suit, omitting the schedules. The plaintiff obtains a written copy of the schedules from the Record and Writ Office.

Exceptions.

An answer commonly contains not only a discovery respecting the matters inquired after by the interrogatories, but also a statement of such matters as the defendant considers material to be stated for the purposes of his defence. As regards the last-mentioned portion of the contents of the answer the plaintiff has no control, but should he consider that a full discovery is not afforded respecting the matters inquired after by the interrogatories, he is entitled, within a time fixed for that purpose by general orders, to except to the answer for insufficiency. This he does by filing in the Record and Writ Clerks' Office exceptions, the draft of which must be settled and signed by counsel, mentioning the particular interrogatories or portions of interrogatories which he considers to be insufficiently answered, and unless the defendant within a limited time submits to answer the interrogatories in the points excepted to, the exceptions are set down for argument before the Court, upon which argument the Court decides whether the answer is sufficient in the points excepted to or not. If the answer is held insufficient the defendant is compelled to put in a further answer, and if the plaintiff considers the answer still insufficient, the exceptions are again set down for argument before the Court. If the second answer is considered to be insufficient the same course of proceeding is adopted; but upon a third answer being held to be insufficient, the Court may order the defendant to be examined orally upon interrogatories on the points as to which it is held to be insufficient, and to stand committed until he shall have perfectly answered the interrogatories.

If the plaintiff does not file interrogatories, the defendant's advisers have to consider whether he shall put in a voluntary answer or not. If his defence depends upon the simple negation of some one or more of the facts alleged by the bill, no answer is requisite, since his mere silence is, for the purposes of pleading, equivalent to a traverse by him of the case made by the bill. If, on the other hand, the defendant's case mainly depends upon independent facts not disclosed by the bill, it is often advisable for him to put in a voluntary answer, which he must do within a limited time. A voluntary answer is sworn and filed like a compulsory answer, and printed in like manner. It is not, however, liable to exception for insufficiency.

The defendant's answer, compulsory or voluntary, as the case may be, having been put in, or no answer having been required, and the time for putting in a voluntary answer having expired, the plaintiff has to determine whether he can safely carry the cause to a hearing upon the pleadings as they then stand. The answer of the defendant may show, or the plaintiff may have otherwise ascertained that the bill contains errors of statement calling for rectification, or that a defence has been or may be set up capable of being neutralized or weakened by the statement of material facts hitherto unnoticed. In these and other cases it frequently becomes advisable for the plaintiff to amend his bill.

Before answer the plaintiff may amend his bill at pleasure on obtaining an order of course for the purpose. After answer, where there is only one defendant, or all join in one answer, the plaintiff may amend once, and once only, as of course, on obtaining an order for this purpose at any time within 4 weeks after the answer is deemed sufficient. If there are several defendants who do not join in answering, he may similarly amend once only at any time within four weeks after the last answer required is to be deemed sufficient. In order to obtain leave to amend a second time after answer (except for the purpose of amending clerical errors in names, dates, or sums, which may be done at any time), the plaintiff must apply upon affidavit, showing, 1st, that the draft of the proposed amendments has been signed, settled, and approved by counsel; and, 2ndly, that such amendment is not intended for the purpose of delay or vexation, but because the same is considered to be material for the case of the plaintiff. And if the plaintiff applies for leave after the expiration of the 4 weeks referred to he must, in addition, show by affidavit that the matter of the proposed amendment is material and could not, with reasonable diligence, sooner have been introduced into the bill. It may be stated generally, that leave to amend is rarely refused, unless there has been extraordinary delay, or the Judge is satisfied that the proposed amendments are vexatious.

The amendments are made by written alterations on the printed bill filed, and by additions on paper, to be interleaved therewith, subject to the restriction that not more than two folios (144 words) of new matter can be introduced continuously at the same part of the original bill. Should this limit be exceeded, the whole bill as amended must be reprinted, and a reprinted copy filed. The draft of the amended

bill must be signed by counsel. It is, speaking generally, competent to the defendant to demur or plead to the amended bill, as in the case of an original bill.

Should the plaintiff require a further answer as to the allegations in the amended bill, he files additional interrogatories, and delivers copies as before explained; and the defendant, if new interrogatories are filed, puts in a further answer by compulsion. If the plaintiff does not file further interrogatories, the defendant, either puts in a voluntary answer or not, as he may be advised in reference to the circumstances of the particular case.

It may here be observed that one portion of a bill may be demurrable, another portion may be capable of being met by plea, while to the remainder it may be necessary to put in an answer. In such a case each mode of defence may be used by one and the same pleading, which is styled a demurrer, plea, and answer, and each portion of which is subject to the same rules as if the said defences had been made severally to several bills. A similar rule applies where two only of these defences are applicable to different portions of the same bill.

When the pleadings are complete there are three modes of proceeding to bring the cause to a hearing.

(*a*) By setting the cause down on bill and answer.

(*b*) By giving a notice of motion for a decree.

(*c*) By replication.

(*a*) This course is only resorted to where the defendant, if only one, or all the defendants, if more than one, other than merely formal defendants, if any, served with copies of the bill, have answered, and where the plaintiff requires no evidence in support of his case, except the answers of the defendants, and the proof by affidavit or *viva voce* at the hearing of any documents which, though not disputed, may not be admitted by the answer. The defendants in this case require no evidence, being entitled to read their answer as evidence against the plaintiff.

(*b*) The practice of moving for a decree is of recent date. It owes its origin to the Act of 1852, (15 & 16 Vict., c. 86., s. 15.)

The plaintiff having filed at the Record and Writ Office such affidavits as he considers will, with the admissions contained in the answers, if any, of the defendants, be sufficient to support his case, gives notice to the defendants, other than merely formal defendants, if any, served with copies of the bill, that he intends, at the expiration of one month from the date of the notice, to move for a decree, and at the foot of the notice of motion the plaintiff specifies the affidavits which he intends to use in support of the motion. The defendant has a fortnight's time (often extended by special order) to file affidavits in answer, and the plaintiff has a week (also often similarly extended) to file affidavits in reply, but the affidavits so filed must be strictly in reply, and no further evidence is allowed on either side without special leave of the Court, which is very rarely granted, and as a rule upon payment of costs.

It may here be conveniently noticed that all affidavits, whether to be used on a motion for decree or in any other proceeding, must be expressed in the first person, must be divided into paragraphs, numbered consecutively, and show at the foot on whose behalf they are filed. By a recent general order (16 May 1862) affidavits and depositions to be used on the hearing of a cause on motion for decree or after issue joined, except such as have been filed for the purpose of interlocutory applications, are directed to be printed.

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As soon as the notice of motion is given, and without waiting for the expiration of the month, the cause may be set down in the Cause List to be heard on the motion for a decree. The cause having been placed in the ordinary Cause List, is heard in its turn, subject to the restriction that it cannot come into the paper for hearing until the month has expired, and of course cannot be heard until the evidence is complete.

Setting down cause on motion for decree.

This procedure is in many respects very convenient, and is adopted very frequently. It differs from the ordinary proceeding on interlocutory motions (to be presently mentioned) in the following respects; that the motion for decree goes into the ordinary Cause List, and that instead of the parties filing affidavits in turn, until they are exhausted, a limit is prescribed.

Persons making affidavits to be used on a motion for decree, are subject to cross-examination on such affidavits before the examiner by the parties desiring to cross-examine them, or by their solicitors or counsel, in the presence of the other parties, their solicitors or counsel. The answers of parties to the suit, are for the purposes of the motion for decree treated as affidavits, which the plaintiff may read as against the particular defendant answering without any notice, but as against other defendants only upon notice. Parties who have put in answers are, upon motion for decree, subject to cross-examination before the examiner in the same way as persons making affidavits.

Cross-examination on affidavits.

The Court is at liberty if it thinks fit to refuse the motion and give leave to the plaintiff to bring on the cause more formally; but in practice it seldom exercises its discretion in this way. The hearing of the motion is treated as being to all intents and purposes the hearing of the cause.

(*c*) If the plaintiff does not set the cause down on bill and answer, or proceed by way of motion for decree, his course is to file replication.

Replication.

At this point it becomes necessary to notice other possible contingencies of pleading besides those of a compelled or voluntary answer and of a defendant not required to answer and abstaining from so doing. It sometimes happens that a plaintiff, after filing interrogatories, is unable, without great delay and expense, to obtain a full answer from the defendant, and he may be advised that, without an answer, he has sufficient evidence to substantiate his case. In this event the plaintiff simply files a traversing note, which is thus worded: "The plaintiff intends to proceed with his cause "as if the defendant had filed an answer travers-"ing the allegations made by the bill." If, however, the plaintiff is advised that he cannot safely bring his cause to a hearing without having an answer from the defendant, or an admission by him of the material allegations in the bill, his course is to proceed against the defendant by process of contempt, *i.e.* to take his body under an attachment with a view to compel to answer. Should the defendant persist in refusing to answer notwithstanding the attachment, or should he abscond, then the remedy of the plaintiff is to proceed to take the bill "*pro confesso*" against the contumacious or absconding defendant, the effect of which proceeding is that, although the plaintiff

Traversing note.

Taking bill pro confesso.

may not get the discovery he wants, he obtains in lieu thereof what in contemplation of the Court is equivalent to an actual admission by the defendant of the facts stated by the bill of the plaintiff.

Taking into account these two additional contingencies of the traversing note and of the taking the bill "*pro confesso*," it will be seen that the defendants to a bill, other than merely formal defendants, if any, served with copies of the bill, must fall within some one of the following five classes, namely:—

1. Defendants who, whether required to answer or not, have in fact answered, and by their answers have alleged a case which the plaintiff wishes to controvert.
2. Defendants who have been required to answer but have not answered, and as to whom the plaintiff has filed a traversing note.
3. Defendants who have not been required to answer and have not answered.
4. Defendants who have put in an answer, the truth of which the plaintiff is willing to admit.
5. Defendants who have been required to answer and have not answered, and against whom the plaintiff has obtained an order to take the bill "*pro confesso*."

Form of replication.

Assuming a suit to embrace defendants of all these 5 classes the plaintiff joins issue by filing against all what is called a replication, in the following form:—

'Between *A.B.* Plaintiff.
and
'*C.D. &c. E.F. &c. G.H. &c.* Defendants.

'The plaintiff in this cause hereby joins issue 'with the defendants C.D., &c., [*all the defend-'ants who have answered or pleaded, or against 'whom a traversing note has been filed, or who 'have not been required to answer and have not 'answered the bill*], and will hear the cause on 'bill and answer against the defendant E.F., &c., '[*all the defendants against whom the cause is to be 'heard on bill and answer*], and on the order to 'take the bill as confessed against the defendants 'G.H. &c., [*as the case may be*].

If it is not intended to hear the cause on bill and answer as against any defendants, or if the bill is not to be taken as confessed against any defendants, the form of the replication is modified to meet the case.

Amendment after replication.

Should it so happen that after replication filed, the plaintiff desires to withdraw his replication and amend, he may do so on the same terms as mentioned with respect to amendment after four weeks from the time of the answer or last answer being deemed sufficient.

Evidence.

The cause is now at issue; and the next step is the taking of the evidence, as between the plaintiff and the first three classes of defendants, or such of them as may exist in any particular case. According to the last alteration of procedure, unless a special order is obtained for taking evidence *vivâ voce* at the hearing, or a special agreement is entered into, the parties go into evidence, either wholly or partially, by way of affidavit, or wholly or partially by the oral examination of witnesses *ex parte* before one of the examiners of the Court, or a special examiner. Any witness may be cross-examined in Court at the hearing of the cause.

Vivâ voce evidence at hearing, &c.

In reference to the special exceptions above referred to, it is to be observed (1) that upon summons taken out by any party within 14 days after issue joined, the Judge at chambers may make an order that the evidence in chief as to any particular facts or issues shall be taken *vivâ voce* at the hearing, and in such cases, the evidence in chief as to such facts or issues, and also the cross-examination and re-examination relating thereto, are to be taken in that mode; and, (2) that if the parties prefer resorting to the mode of examining witnesses established by the procedure introduced by the Act of 1852, that is to say, by examination and cross-examination and re-examination before the examiner, (not *ex parte*, but in the presence of the solicitors and counsel on both sides,) they may upon filing, at the office of the Clerks of Records and Writs, an agreement so to take the evidence, proceed according to the former practice.

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Aged, infirm, &c witnesses.

An order may be obtained at chambers for the oral examination before the Examiner, and in the presence of solicitors and counsel, of any witness where by reason of his age, infirmity, or probable absence out of the jurisdiction, it is expedient that such order should be made.

General practice to evidence.

Having regard to the foregoing explanations, the ordinary practice of the Court as to evidence after issue joined, except the evidence as to particular facts or issues, which may be ordered to be taken *vivâ voce* at the hearing, may be stated thus: Each party verifies his case, wholly or partially by affidavit, or wholly or partially by oral examination of witnesses *ex parte* before one of the Examiners of the Court or a special Examiner, and there is no cross-examination otherwise than at the hearing of the cause.

Admissions.

In reference to proof of written documents it should be observed that a recent Act (21 & 22 Vict. c. 27. s. 7.) provides that in any case in which all parties to a suit are competent to make admissions, any party may call on any other party by notice to admit any document, saving just exceptions; and in case of refusal or neglect to admit, the costs of proof are to be paid by the party refusing or neglecting, and no costs of proof are to be allowed, unless notice to admit be given or the omission to give notice has saved expense. This enactment though limited expressly to suits all parties to which are competent, is in other respects quite general in its terms, and has been to a great extent acted upon as applying to suits generally. There is, however, as yet no decision on this point, and it may perhaps be doubted whether the enactment really applies to any other cases than those of jury trial before the Court under the provisions of the Act.

Admissions are, however, apart from the provisions of the Statute, commonly resorted to by arrangement between the parties, more especially in reference to documents, and where the documents to be proved are numerous.

The admission then commonly assumes the form of an agreement between the solicitors, specifying the documents in a schedule; and modifying and qualifying the admission as to some particular document or documents peculiarly circumstanced. Admissions of this kind often provide also for admitting in evidence copies which the parties have had an opportunity of examining beforehand in lieu of originals.

It is considered that under the 24th Order of 5th February 1861, admissions may, with the sanction of the Court or Judge at chambers, be

entered into on behalf of infants, married women, and persons of unsound mind.

At the expiration of eight weeks after issue joined the evidence in chief is closed, unless the time be further enlarged. And (except by agreement, or in the special cases before stated,) the only cross-examination now allowed where issue has been joined by filing a replication, is at the hearing. When on the replication notice is given of the plaintiff's intention to hear the cause on bill and answer as against any of the defendants, there is in truth no issue joined between the plaintiff and such defendants, and as against them the cause is heard in the same way as if they had been the only defendants to the bill, and as if the cause had been set down on the bill and their answer without any replication.

As soon as the evidence in chief is closed, the plaintiff may set down the cause and obtain and serve on the defendants a *subpœna* to hear judgment, which must not be returnable less than one month from the *teste* of the writ, and must be served 10 days before the return. The cause cannot be heard before the return day of the *subpœna*. In case either party desires to cross-examine *viva voce* at the hearing, notice to that effect is given to the party whose witness it is desired to cross-examine; and in order to provide against the contingency of the cross-examination leading to the unnecessary detention of witnesses, and to additional expense, an application may, in cases where a cross-examination is required, be made to the Court or the Judge at Chambers, to fix a day for the hearing of the cause.

It may here be noticed that previously to any cause being set down to be heard in either of the three modes of proceeding above explained, the plaintiff must obtain an order for entering at the Record and Writ Clerks' Office a memorandum of the service upon any formal defendants of a copy of the bill, where the bill prays as against such defendants that on being so served they may be bound by the proceedings, and where no appearance has been entered by such defendant. This order is obtained on motion in Court on an affidavit of service of the bill.

At this point it will be convenient to advert to certain steps more or less frequently taken by the defendant as actor against the plaintiff in the ordinary course of the cause, previously to the hearing.

These are, (1.) Filing cross interrogatories.

(2.) Applying for production of documents.

(3.) Moving to dismiss the bill for want of prosecution.

(1.) The case of a defendant may depend for its support chiefly on facts lying within the knowledge of the plaintiff, and the defendant may feel satisfied that the plaintiff would, upon being interrogated, be compelled to admit these facts. Under the old practice, the course in those cases was to file a cross bill for discovery. Now the defendant may, as soon as he has himself put in a sufficient answer, file in the Record and Writ Office interrogatories for the examination of the plaintiff, prefixing to such interrogatories a concise statement of the subjects on which a discovery is sought, and the plaintiff is bound to answer, and the defendant entitled to except in like manner as if the interrogatories had been filed in a suit for discovery.

(2.) A defendant has also the right, as soon as, if required to answer, he has put in a full answer to the plaintiff's bill, of applying against the plaintiff for production of documents, in precisely the same way as already explained with respect to applications of this kind by the plaintiff against a defendant.

(3.) Where a defendant finds that the plaintiff, either through want of confidence in his own case or for other reasons, fails to proceed with diligence, he may by motion to dismiss the bill for want of prosecution compel the plaintiff either to go on or to put an end to the suit altogether. The practice of the Court is so framed as to give a defendant a right in the event of unreasonable delay on the part of the plaintiff to move to dismiss at a certain time after each step in the cause.

It seems unnecessary to specify in detail all the various circumstances under which a defendant acquires this right to move to dismiss; the principal are,—

(*a*) Where the plaintiff does not within four weeks after the answer or the last of the answers is deemed sufficient, or after traversing note filed, either file replication, *or* set down cause on bill and answer,—*or* serve notice of motion for a decree,—*or* proceed to amend.

(*b*) Where a plaintiff does not set down the cause to be heard, and serve *subpœna* to hear judgment within four weeks after the evidence is closed.

(*c*) A defendant from whom no answer has been required may move to dismiss at the expiration of three months after appearance, unless the cause has been set down to be heard either on motion for decree or after replication.

Upon the hearing of a motion to dismiss, the Court generally declines entering upon any inquiry into the merits of the bill or of the defence. The points to be considered are simply, (1.) Is the defendant entitled in point of time to move to dismiss? (2.) What excuse, if any, can the plaintiff give for his delay? In the most frequent case, namely that of a motion to dismiss made before replication filed, the common result of the motion is that the plaintiff is ordered to file a replication within a week, and to pay the defendant the costs of the motion. In default of filing a replication within the week the order proceeds to dismiss the bill with costs, to be paid by the plaintiff. If the plaintiff desires it, he will in most cases be allowed the same time to set down the cause on bill and answer, or to give a notice of motion for a decree instead of filing replication.

Another proceeding, open alike to a plaintiff as to a defendant, viz., exceptions for scandal, by means of which portions of the pleadings or of the evidence may be expunged and removed from the consideration of the Court, may be here mentioned. Scandal may be said generally to consist in the allegation of facts in unbecoming language, or in the allegation against a party or even a stranger to the cause of some crime or misdemeanor irrelevant to the matter in dispute.

The proper mode to be adopted by the person aggrieved in order to procure the removal of such allegations from the bill, answer, affidavit, or deposition in which it may occur, is by exceptions in writing, signed by Counsel, describing the particular passages alleged to be scandalous, which exceptions must be filed with the Clerk of Records and Writs. Such exceptions are heard by

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Exceptions for scandal.

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the Judge to whose branch of the Court the cause is attached, in like manner as exceptions to an answer for insufficiency.

Impertinence.

The practice of excepting for impertinence, that is, the introduction of irrelevant matter into any written proceedings, has been abolished, but at the hearing of the cause application may be made to the Court that any party introducing impertinent matter into the proceedings may have the costs occasioned thereby.

Hearing.

The order of the hearing may be generally stated thus:—

1. The leading counsel for the plaintiff states the case. Then the plaintiff's evidence is heard and his documentary evidence put in, the junior counsel for the plaintiff is heard; the statement of the leading counsel for the defendant, the defendant's evidence, and the argument of the defendant's junior counsel, follow next; and if there are various sets of defendants, their counsel and evidence are heard and put in, in the order in which the defendants names appear on the record, subject to the qualification, that the counsel for defendants who have the same interest as the plaintiff are heard immediately after the plaintiff's counsel. The senior counsel for the plaintiff has the reply. The practice of the junior counsel on each side opening the pleadings is now seldom adopted.

Drawing up of decree.

The decree, whether made upon hearing on bill and answer, or upon motion for decree, or upon hearing after issue joined, is prepared by the Registrar from his own notes taken in Court and from the notes on the briefs of Counsel, and very frequently, from minutes prepared by Counsel for the plaintiff, and submitted to the Counsel for the defendants. The Registrar generally adopts (in substance) minutes agreed to by the Counsel for all parties.

Accounts and inquiries are numbered.

Where the decree directs accounts to be taken or inquiries to be made, each direction must be numbered so as to designate each distinct account or inquiry by a separate number.

The draft of the decree having been prepared by the Registrar, a copy of such draft is delivered to the solicitor having the carriage of the order, and copies of the mandatory part of the decree are delivered to the solicitors of the other parties. The draft is ultimately settled by the Registrar in the presence of such of the solicitors as attend. If the parties differ as to the draft decree, the Registrar commonly states the form in which he intends to settle the decree, unless otherwise directed by the Court, leaving it to any dissatisfied party to obtain permission if possible from the Court to allow the cause to be put in the paper to be spoken to, or to give formal notice of motion to vary the draft.

Passing and entering decree.

The form of the draft being settled, the decree is copied, passed by the Registrar on a day specially appointed for that purpose, and subsequently entered. The process of entry consists in making a copy of the decree in certain books kept under the direction of the Senior Registrar, which, when complete, are transmitted to and preserved in the Report office.

(II.)—Proceedings subsequent to Decree and down to the Final Order.

Accounts and inquiries.

When the decree made at the original hearing is not final but directs accounts or inquiries, leaving the rights of the parties to be adjusted or more completely adjusted at the hearing of the cause on further consideration after the result of those accounts and inquiries shall have been ascertained, the prosecution of the accounts and inquiries directed by the decree takes place in the Chambers of the Judge to whose branch of the Court the cause is attached.

The first step taken by the party having the prosecution of the decree is to leave a copy thereof at the Judge's chambers, with a note of the names of the solicitors for all the parties. A summons, which must be served two clear days before the return thereof is then issued to proceed with the decree. At the return of this summons the first requisite is to satisfy the Judge, or his Chief Clerk, that all the persons who under the old practice were necessary parties to the bill, and who now in lieu of being made parties are to be served with notice of the decree, have been in fact so served; in reference to which it should be noticed that parties so served are entitled at any time within one month after service to apply to the Court to add to the decree. This preliminary requisite being complied with, directions are given as to the prosecution of the accounts and inquiries, and where accounts are directed a time is usually fixed within which the accounting party must bring in his account. The account is subsequently brought in and verified by affidavit, and the items of discharge (except as regards items of less amount than 40*s.*) must be vouched. If any party is dissatisfied with the account, he may claim to have the accounting party examined *vivâ voce* in Chambers, but he must give him notice as to the points upon which he seeks to examine him.

In reference to the inquiries directed at Chambers, which are of a most miscellaneous kind, it may be observed that the proceedings are ordinarily conducted by the solicitors of the parties, but that in other respects the course of proceeding is generally the same as upon motions in Court. No states of facts, charges, or discharges are brought in. Copies, abstracts, or extracts of or from accounts, deeds, and documents are supplied for the use of the Judge and his Chief Clerk when required. The evidence upon which the investigation of the points directed to be inquired into proceeds, may be of all or some or one of the three following kinds:—1. The evidence in the cause entered into before the hearing. 2. Affidavits filed after the hearing. 3. The evidence of the parties and fresh witnesses taken before the Chief Clerk or the Examiner.

The prosecution of accounts and inquiries in Chambers is, as a general rule, before the Chief Clerk, who refers to the Judge in cases of difficulty, but it is a matter of right with any suitor to have his case adjudicated upon by the Judge in person; and the Chief Clerk, upon the request of any party appearing before him, adjourns the matter for hearing before the Judge himself.

Where in the prosecution of the decree or order it appears to the Judge that further accounts should be taken or further inquiries made, he may order the same to be taken or made accordingly.

Scandalous matter introduced into any statement, affidavit, or proceeding at Chambers, is brought to the notice of the Judge by taking out a summons, and upon the hearing of such summons, is expunged.

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In addition to accounts and inquiries, the various matters formerly transacted in the Masters offices between the decree on the hearing and the order for further directions, are now prosecuted in Chambers. Thus the advertisements for creditors, legatees, heirs-at-law, and next of kin, the proof by creditors of their debts, the sale, realisation, and management of the real and personal estate to be administered in the suit, are all conducted at Chambers.

In issuing advertisements (instead of issuing as under the old practice first a general, and then a peremptory advertisement,) one form of advertisement only, and that peremptory, is issued, but it is repeated as many times and in such papers as may be thought expedient.

Creditors and other claimants coming in to prove under a decree enter their claims in a book kept in the Judge's Chambers called the "Claims Book," and give notice of their having done so, and of the affidavit filed in support of their claim, to the solicitors in the cause. The creditor or claimant is liable to be cross-examined upon his affidavit. So long as any claims remain undisposed of, so that the hearing of the claims stands adjourned, any claimant may come in as of course, provided he enters his claim and files his affidavit four clear days before the last adjournment day, and provided no certificate of debts or claims has been made in the meantime; but subject to this exception no claim can be received after the time fixed by the advertisement for coming in has expired, unless with the leave of the Judge at Chambers obtained upon special application.

A creditor who establishes his debt in Chambers is entitled to his costs of doing so, and the costs are added to the debt. In the absence of special circumstances, a fixed sum (commonly 2*l.*) is allowed to the creditor as costs of proof. The Court will sometimes order a person who makes an unsuccessful claim as a creditor to pay costs.

In connexion with the transaction of business at Chambers the conveyancing counsel of the Court must be mentioned. Under the old practice previously to 1852, the masters in the prosecution of the decrees referred to them were in the habit of availing themselves of the professional assistance of conveyancing counsel approved by themselves.

By the "Masters in Chancery Abolition Act," 15 & 16 Vic. c. 80., the Lord Chancellor was empowered to appoint any number, not less six, of conveyancing counsel then in actual practice, upon whose opinion the Court of Chancery or any Judge might act in the investigation of the title to an estate, with a view to the investment of money in the purchase or on mortgage thereof, or in the settlement of a draft of a conveyance, mortgage, settlement, or other instrument.

In pursuance of this authority six conveyancing counsel have been appointed, amongst whom the business from time to time referred by the Court or Judges is distributed, according to a secret rota, and in the event of the conveyancing counsel in rotation being unable from illness or declining to accept any reference, the same is offered to the other conveyancing counsel in rotation according to their seniority at the bar.

In cases of sales under the direction of the Court the title is generally investigated by one of the conveyancing counsel, there being an enactment in the Equity Procedure Act of 1852, prescribing that course.

The other matters which are referred to the conveyancing counsel are generally in the discretion of the Judge.

Accountants, &c.

The Court has also the power under the same Act of availing itself of the assistance of accountants, merchants, engineers, actuaries, and other scientific persons, the better to enable itself to determine any matter at issue in any proceeding and to act upon the certificate of such persons.

Certificate.

The results of the accounts and proceedings in Chambers are embodied in a certificate made by the chief clerk, which is divided into paragraphs corresponding to the paragraphs in the decree, and which refers to the evidence upon which each result stated in the certificate is founded.

The draft of the certificate is first prepared and a copy furnished to the various solicitors attending the proceeding, and is settled in their presence.

Varying or discharging the certificate.

The certificate when settled by the chief clerk is signed by him, and after such signature any party may, within four clear days after signature, take out a summons to obtain the opinion of the Judge; should no party take out such summons the certificate is at the expiration of the term of four days submitted to the Judge for approval, and signed by him. After the certificate has been signed by the Judge and filed, it is binding on all parties unless discharged or varied either in Chambers or in open Court, and any application to discharge or vary the same must be made within eight clear days after the filing of the certificate. After these eight days have elapsed the certificate stands upon the same footing as a report by a Master under the old procedure, after absolute confirmation, and can only be discharged or varied upon special grounds.

Setting down cause on further consideration.

After the expiration of the eight days from the filing of the certificate, the cause may be set down by the Registrar on the written request of the solicitor of the party having the conduct of the proceedings; and after the expiration of fourteen days from the filing, it may be so set down on the request of the solicitor for any party, but the cause cannot come into the paper until after the expiration of ten days from the time of its being set down. And the solicitor setting down the cause must give notice of its being set down at least six days before the day on which it can come into the paper.

Summons to vary certificate.

When a summons is taken out or notice of motion given to discharge or vary the certificate after it has been approved by the Judge, and the final determination of the questions in dispute in reference to the certificate will enable the Court to dispose of the cause generally, the common practice is to set down the summons or motion for hearing, together with the hearing of the cause on further consideration (similarly to the old practice of setting down the exceptions to the Master's report, with the hearing on further directions), and then, upon the whole matter coming on to be heard in Court, the order on further consideration is pronounced.

(III.) Special Practice in certain particular kinds of Suits and Proceedings.

Under this head may be mentioned—

(1.) The procedure by summons originating in Chambers.
(2.) That by special case.
(3.) Foreclosure and redemption suits.
(4.) Partition suits.
(5.) Bills to perpetuate testimony.

EQUITY.

Statement of Mr. Barber as to England.

1. *The procedure by Summons.*

Administration decree upon summons.

Any creditor, or specific or residuary legatee under a will, and any one of the next of kin of a deceased person, may obtain, as of course, a summons from the Master of the Rolls, or any of the Vice-Chancellors, requiring the executors or administrators, as the case may be, of the deceased to attend before him at Chambers, and show cause why an order should not be granted for the administration of the personal estate of the deceased. The summons being in this case an original proceeding, the rules of the Court provide that a duplicate (which thus takes the place of the bill), shall be filed at the office of Records and Writs, and appearances are entered by the parties served. There must be an interval of seven clear days (instead of two, as where the summons is taken out in an existing cause) between the service of the summons and the return thereof. Upon the summons coming on to be heard, unless it appears that there are circumstances of complication connected with the claim of the plaintiff, or with the administration of the estate, the Judge at Chambers, upon the hearing of the summons, makes the common decree for the administration of the personal estate of the deceased.

Distinction as to real estate.

As regards real estate, any creditor or person interested under the will of a deceased person may obtain summarily by summons an order for the administration of his real estate, but only in cases where the *whole* of the real estate is by devise vested in trustees who are by the will empowered to sell such real estate, and authorized to give receipts for the rents and profits and produce of sale. The power of making an administration decree of real estate upon summons does not apply where there is an intestacy, nor where under the will the real estate goes to different persons; the intention being that the special jurisdiction should operate only where the real estate is vested in some person or persons having with respect thereto powers and duties as extensive, or nearly so, as those which the law itself confers upon executors and administrators.

Proceeding applicable only to simple cases.

This proceeding by way of summons is, as has been stated, only applicable to simple cases, and as a general rule the only decree made thereupon will be the common decree for administration.

Thus, if it is desired to charge an executor with wilful neglect or default, the proper course is to file a bill.

Subsequent procedure.

After decree made upon summons, the proceeedings at Chambers are the same as if the decree had been made upon bill filed. The further consideration is brought on by summons, and where any question arises, or is likely to arise which is considered proper for the decision of the Court, is adjourned for hearing into open Court; but in many cases the order or further consideration is made in Chambers.

The procedure for obtaining an administration decree by summons is extensively resorted to.

Sir George Turner's Act.

The general procedure as above explained is, however, not applicable where an executor or administrator is desirous of having the estate of his testator or intestate administered under the direction of the Court at Chambers without the expense of a formal suit, and no one is willing to take out an administration summons against him. He has under that procedure no power of taking the initiative. The special provisions of Sir George Turner's Act 13 & 14 Vict. c. 35, as subsequently extended, enable him, however, by summary procedure at Chambers, to obtain, not indeed a complete administration of the estate, but a protection against all latent debts and liabilities of his testator or intestate.

By section 19 of that Act, after reciting that it was expedient to provide means for enabling executors or administrators of deceased persons to ascertain whether there were any outstanding debts or liabilities affecting the personal estates of such persons without the delay and expense of suits to administer such estates, it was enacted, that it should be lawful for the said Court upon the application of the executors or administrators of any deceased person, by order to be made upon motion or petition of course, and to be in the form or to the effect set forth in the schedule thereto, with such variations as circumstances might require, to refer it to one of the Masters of the said Court, to take an account of the debts and liabilities affecting the personal estate of such deceased person, and to report thereon; provided always, that no such order should be made until the expiration of one year next after the death of such deceased person, or pending any proceedings to administer the estate of such person, and that in case at any time after the making of such order any decree or order for administering the estate of such deceased person should be made, it should be lawful for the said Court, by such decree or order, to stay or suspend the proceedings under such order of course, on such terms and conditions, if any, as to the said Court should seem just. And by subsequent sections of the Act provision is made for proceedings consequential upon the said order, and for indemnifying executors and administrators who avail themselves of the Act against debts and liabilities other than those established under the said order.

The jurisdiction conferred by the foregoing Act has been enlarged by the 23 & 24 Vict. c. 38. s. 14, which enacts that the order may be made immediately or at any time after probate or letters of administration shall have been granted, and that such order may be made either by the Court of Chancery upon motion or petition of course, or by a Judge of the said Court sitting at Chambers, upon a summons in the form used for originating proceedings at Chambers, and that after any such order shall have been made the said Court or Judge may, upon the application of the executors or administrators, by motion or summons restrain or suspend, until the account directed by such order shall have been taken, any proceedings at law against such executors or administrators by any person having or claiming to have any demand upon the estate of the deceased by reason of any debt or liability due from the estate of the deceased, upon such notice and terms and conditions (if any) as to the said Court or Judge shall seem just.

The procedure by summons, by way of original proceeding, is also adopted in applications relating to the guardianship and maintenance of infants. Applications as to the appointment of guardians for infants, and the maintenance of infants, are very frequently made by way of interlocutory applications in an existing suit, and when so made they fall under the class of interlocutory applications; but the applications intended to be here referred to, are those made without suit, and in exercise, so to speak, of the old Chancery

procedure as recently modified. According to this old procedure, the Court was in the habit, upon a petition being presented, entitled in the matter of the infant, to make an order referring it to the Master to appoint a guardian, and to inquire as to maintenance, provided it considered the property of the infant to be not sufficiently large to warrant the more formal procedure by bill. The limiting value of property requisite to induce the Court to exercise the summary jurisdiction under the old procedure, was never distinctly defined, and the tendency of the more modern practice was towards an extension of the jurisdiction.

Under the present practice this summary jurisdiction is exercised at Chambers upon a summons, entitled (as the old petition was) in the matter of the infant.

As the proceedings in this case originate in Chambers, the rules as to filing the summons and entering appearances, before referred to, apply equally here.

It should be observed with respect to proceedings originating at Chambers generally, that the Court has no power to order service of a summons out of the jurisdiction.

(2.) *Procedure by Special Case.*

This species of procedure applies only where there being no dispute as to facts, it is desired to obtain the opinion of the Court upon some question or questions of law.

The general nature of the cases to which it applies cannot be better stated than in the words of the Act (13 & 14 Vict. c. 35), which enacts "That it shall be lawful for persons interested or claiming to be interested in any question cognizable in the Court of Chancery, as to the construction of any Act of Parliament, will, deed, or other instrument in writing, or any article, clause, matter, or thing therein contained, or as to the title or evidence of title to any real or personal estate contracted to be sold or otherwise dealt with, or as to the parties, or to the form of any deed or instrument for carrying any such contract into effect, or as to any other matter falling within the original jurisdiction of the said Court, as a court of equity, or made subject to the jurisdiction or authority of the said Court by any statute, not being one of the statutes relating to bankrupts, and including among such persons all lunatics, married women, and infants, in the manner and under the restrictions herein-after contained, to concur in stating such question in the form of a special case for the opinion of the said Court, and it shall be lawful for all executors, administrators, and trustees to concur in such case."

In form the special case much resembles a bill. It is entitled as a cause between some or one of the parties interested as plaintiffs or plaintiff, and the others as defendants, and states the facts requisite for obtaining the judgment of the Court; the questions submitted for the opinion of the Court occupying a position analogous to that of the prayer of the bill. The case is, however, not printed but written. It is filed in the same way as a bill, and appearances are entered by the parties thereto, and upon appearance all parties not under disability are bound by the statements therein.

For the protection of persons who are under disability, it is necessary, where any such are parties to the case, that a special application should be made in open Court for leave to set down the case for hearing, and in many cases supported by affidavit and other evidence as to the truth of the statements contained in the case. As soon as the case is set down it takes its place in the cause list with the general causes. Upon the hearing of the special case the Court may refer to the whole contents of the documents stated in the special case.

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Effect and operation of the decision.

The enactment determining the effect and operation of the decision of the Court in special cases is as follows:—"That it shall be lawful for the said "Court, upon the hearing of any such special "case as aforesaid, to determine the questions "raised therein, or any of them, and by decree "to declare its opinion thereon, and, so far as the "case shall admit of the same, upon the right "involved therein, without proceeding to administer any relief consequent upon such declaration; and that every such declaration of "the said Court contained in any such decree "shall have the same force and effect as such "declaration would have had, and shall be binding "to the same extent as such declaration would "have been, if contained in a decree made in a "suit between the same parties instituted by bill."

If upon the hearing of the special case the Court is of opinion that the questions raised thereby, or any of them, cannot properly be decided upon such case, the Court may refuse to decide the same.

The procedure by special case has been far less resorted to of late than it was at first after the passing of the Act which introduced it.

(3.) *Foreclosure and Redemption Suits.*

The practice in foreclosure and redemption suits in the English Court of Chancery differs not merely in its general procedure from that which obtains in ordinary Irish Chancery suits, but specifically from the Irish practice in suits of a similar kind, and demands therefore a special notice.

Parties.

As regards parties the rule is, that a mortgagee filing a bill for foreclosure must make all persons who fill the character of mortgagees subsequent to himself or who are interested in the equity of redemption defendants. If, however, the plaintiff is a second or subsequent mortgagee, he is not obliged to make the first mortgagee or prior incumbrancers (as the case may be) parties.

Form of relief in foreclosure suit.

The explanation of the rule is found in the relief commonly afforded by the Court on a bill of foreclosure, which is as follows:—An account is taken of what is due to the plaintiff for principal, interest, and costs, computing the interest prospectively for six months from the date of the certificate, and the next (or 2nd) incumbrancer must redeem at the expiration of the six months or be foreclosed. If he does not then redeem, three months further time is given to the next (or 3rd) incumbrancer, and so on throughout the whole chain of incumbrancers. If the 2nd incumbrancer *do* redeem, an account is then taken of the subsequent interest on what he has paid to the first incumbrancer, and of the principal, interest, and costs on his own security, and the 3rd incumbrancer must pay the aggregate amount so found due within three months from the date of certificate or be foreclosed, and so on throughout the whole chain of incumbrancers.

EQUITY.

Statement of Mr. Barber as to England.

Puisné mortgagee not interested in foreclosure suit by a puisne mortgagee. *Secus* in the case of a redemption suit.

It results from this practice that the estate itself not being in any way dealt with and only the incumbrancers subsequent to the plaintiff redeeming or being foreclosed, whatever takes place in a foreclosure suit by a *puisné* mortgagee cannot affect incumbrancers who take paramount to him, and consequently such incumbrancers are not necessary parties. The plaintiff may, if he think fit, make prior incumbrancers parties, but if he do so the bill as against them is a bill to redeem.

On the other hand, to *redemption suits* by an intermediate incumbrancer, where the same principle of successive accounts and redemptions forms the guide to the decree, all the incumbrancers, whether prior or subsequent to the plaintiff, must be made parties; the prior incumbrancers, because it is against them that the particular relief prayed, "redemption" is sought; the subsequent incumbrancers, because the prior incumbrancers are entitled to have the accounts taken in the presence of all parties interested, and either to be redeemed or to have a complete decree of foreclosure barring not merely the plaintiff, but all the incumbrancers who come after him.

If the plaintiff, in a bill either to redeem simply or to redeem prior and foreclose subsequent incumbrancers, fail himself to redeem, his bill is dismissed with costs, and this dismissal operates as a foreclosure, which precludes his filing a subsequent bill to redeem.

Decrees very complicated.

Decrees in foreclosure and redemption suits, especially where more than one subject matter is included in one or more of the mortgage deeds, are frequently extremely complicated and give rise to great difficulties; and where there is any doubt as to the order of the priority of the various incumbrances, it is impossible to frame a complete decree until the priorities are ascertained.

Reference to ascertain priorities after the first step. Statutory power of sale.

In these cases the first step is an inquiry to ascertain the priorities, in the prosecution of which inquiry points of law and equity of extreme nicety (as, for instance, questions of tacking) often arise, and in this way a plaintiff, who is without dispute the first mortgagee, may be delayed in obtaining a decree merely by reason of difficulties in adjusting the priorities *inter se* of incumbrancers who all take subject to his first mortgage.

Statutory power of sale.

In such a case, and others in which the ordinary foreclosure decree would be undesirable, a partial remedy is afforded by the Equity Procedure Act of 1852, s. 48, which enacts, "That it shall "be lawful for the Court in any suit for the "foreclosure of the equity of redemption in "any mortgaged property, upon the request of "the mortgagee, or of any subsequent incum-"brancer, or of the mortgagor, or any person "claiming under them respectively, to direct a "sale of such property, instead of a foreclosure "of such equity of redemption on such terms as "the Court may think fit to direct, and if the "Court shall so think fit, without previously "determining the priorities of incumbrances or "giving the usual or any time to redeem."

The Act proceeds to provide that where the request for sale is made by a subsequent incumbrancer, or the mortgagor, and the first mortgagee shall not consent, a sale shall be directed only upon the party who requests it paying such deposit and submitting to such terms as the Court may impose.

In exercising this new statutory discretion the Court takes into consideration the interests of all who have claims on the mortgaged property. Complication is generally a strong inducement to direct a sale. When the first mortgagee opposes, the Court will generally require the party who prays a sale to deposit a sufficient sum to cover the probable costs in the event of the property not being sold; and it has sometimes imposed as a term, that the reserved bidding should be not less than the amount due to the opposing first mortgagee.

In certain cases, *e. g.*, where infants were interested in the property, or where the mortgagor was dead, and it became necessary to administer his estate, the Court was always in the habit of directing a sale under its general procedure, and this practice still prevails.

The foregoing observations must be viewed as proceeding upon the assumption that the security is a formal mortgage and not a mere equitable mortgage by deposit, and that the subject matter mortgaged is real estate. In cases of equitable mortgages of real estate it is perhaps still unsettled whether the proper decree is for sale, or for foreclosure. Where the subject matter mortgaged consists of personal property, such as stock, railway shares, or furniture or other personal chattels, the decisions point to the conclusion that the mortgagee may, at his option, claim a decree either of sale or foreclosure.

In respect to costs, it may be said generally that where a sale is decreed in lieu of foreclosure, each mortgagee adds his costs to his mortgage debt, and is paid his entire principal, interest, and costs in priority to all mortgagees whose securities rank after his own; the proceeds of the sale being treated as standing strictly in the place of the mortgaged property.

(4.) *Partition Suits.*

The proceedings in partition suits in reference to issuing of commission, mode of dealing with costs, and otherwise, are generally the same in England as in Ireland, but the practice which has recently been introduced into the English Courts of dealing with questions of partition without a commission requires notice.

The new practice is to pronounce a decree declaring in the usual form the rights to a partition, but instead of going on to direct a commission the decree proceeds to direct that proposals for a partition be laid before the Judge for his approval. Subsequently, upon proceeding with the decree in chambers valuations and affidavits are laid before the Judge, and the scheme of partition is approved by him at once without the intermediate expenses of a commission.

The Court has even gone further than this, and has at the hearing decreed a partition in accordance with an apportionment made by surveyors.

(5.) *Bills to perpetuate Testimony.*

According to the practice of the Court, independently of recent legislative enactment, where a person entitled presumptively to some future interest in *property* finds his title is likely to be impeached, and the testimony upon which his title depends is in danger of being lost through death or mental incompetency of witnesses, he may file a bill against all persons interested in

disputing his title, praying that witnesses may be examined respecting the points in controversy, and that the evidence may be perpetuated for the benefit of himself and those claiming under him.

The original jurisdiction of the Court in this respect (which was held not to apply to the case of a disputed dignity or office, nor to a mere *spes successionis*) was considerably extended by the 5 & 6 Vict. c. 69.

This Act provided in substance that any person who would, under the circumstances alleged by him to exist, become entitled *upon the happening of any future event* to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which could not by him be brought to trial before the happening of such event, should be entitled from and after the passing of that Act to file a bill in the High Court of Chancery to perpetuate any testimony which might be material for establishing such claim or right.

The Act provides for making the Attorney-General a defendant to all suits instituted under the authority of the Act, touching any honour, title, or dignity, or any other matter in which the Crown may be interested.

The practice under this head of jurisdiction presents the following peculiarities:—The bill is never brought to a hearing, there being no question to be decided; and if it be not duly prosecuted, the proper motion on the part of the defendant is, not to move to dismiss for want of prosecution, but to move that the plaintiff do proceed within a given time, or pay the defendant his costs.

According to the old practice, the evidence was taken by deposition upon interrogatories before the Examiner alone, and could not regularly be known by the parties at the time; but it is now taken in the mode prescribed by the practice introduced in 1852, *i.e.*, by examination and cross examination before the Examiner in the presence of the parties, their counsel, or solicitor, and the depositions though necessarily known to both parties are not available unless by the death of the witness or otherwise; his evidence cannot be obtained at the time when litigation actually arises.

As to costs, the practice seems to be that a defendant who merely cross-examines the witnesses of the plaintiff is entitled to be paid his costs of suit by the plaintiff; but that if a defendant avails himself of the bill to perpetuate testimony in his own favour, and examines witnesses himself, he must pay his own costs.

(IV.) Interlocutory Applications.

Interlocutory applications of various kinds may be made in a pending suit by either a plaintiff or defendant, and in many cases by persons not parties to the suit. The procedure in this case is by (1) motion, (2) petition, or (3) summons at chambers.

1. Where a party proceeds by motion, unless the case be one entitling him to move *ex parte*, he serves the other parties in the cause (commonly by their solicitors) with a notice entitled in the cause, specifying the day on which the Court will be moved, the Judge before whom the motion is intended to be made, and the terms of the order which the Court will be asked to make. This notice must be given sufficiently early to allow at least two clear days between the time of its service and the time of the motion being heard, *e. g.*, a notice of motion for a Thursday must be given before the close of office hours (7 p m.) on Monday. However, in pressing cases the Court on an *ex parte* application by the party wishing to move will allow the ordinary time of service to be abridged, or, as the phrase is, give leave to serve short notice of motion. Where short notice is given the notice must state that it is given by leave of the Court, otherwise the parties against whom the motion is made may disregard the notice, appearing as it does on the face of it to be irregular in point of time. The evidence in support of a motion is by affidavit. The party moving files affidavits immediately after giving his notice of motion, or if he has filed them previously, or wishes upon the hearing of the motion to use any other affidavits filed previously to the date of the notice, he commonly specifies them at the foot of the notice of motion, the rule being that the party opposing the motion is not bound to search for affidavits further back than the date of the notice. The general practice imposes no restriction with respect to the time within which affidavits must be filed. The person moving may file affidavits at any time until the motion is actually heard. The practical result of this rule as to affidavit evidence is that the hearing of a contested motion is often frequently deferred. Upon the counsel for the moving party proceeding to make the motion, some one of the counsel on the other side states that affidavits in support of the motion have very recently been filed, and that his client requires time to answer them, and time is given; or else, just as counsel is about to open the motion, he is told that one of his opponents has filed affidavits, perhaps, that very morning, too long to admit of an immediate decision as to the necessity for answering them, and he is obliged to defer moving in order to gain time for further consideration. Theoretically, a motion may thus stand over from time to time until both sides have exhausted themselves in affidavits. Practically, the delay is lessened by conditions imposed by the Court when the motion is mentioned; as, for instance, that the party opposing the motion shall file his affidavits by a certain day, and that the party moving shall file his affidavits (if any) in reply by a certain subsequent day; though, even where such directions are given, it is difficult to shut out material evidence solely on the ground of its not having been adduced in time. Each party has the right of cross-examining his opponent's affidavit witnesses orally before the Examiner, in the presence of the parties, their counsel, and solicitors; and this right is very frequently exercised.

The order in which a motion is heard depends upon the precedence at the bar of the counsel moving. Certain days are set apart by the practice of the Court for hearing motions. Commonly the first and last days of term, and every Thursday in term are motion days. In the sittings out of term, days, called seal days, are specially fixed on which motions are taken. Motions are ordinarily heard as follows:—The Queen's counsel, being called on by the Judge, in turn, in order of their precedence, bring on the motions they have to make (each counsel being restricted to two opposed motions, after making which, the right of moving passes to the next

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counsel in standing), and then the barristers of the outer bar (subject to a similar restriction as respects number of motions) move according to their precedence. No list of motions is ordinarily made out. Any motions undisposed of at the close of the day allotted to this description of business, must go over until the next motion or seal day, unless the Court thinks it right to hear them sooner, and, for that purpose, to postpone the general business of the Court; but a motion so necessarily standing over has no right of precedence over new motions of which notice may be given in time for the next motion or seal day.

Hearing of motions.

The mode in which motions are heard when actually brought on is similar to that of the hearing of a cause. A party dissatisfied either with the refusal of a motion or with the order made thereon, and desiring to appeal, does so by renewing the motion before the Court of Appeal, or moving that the order made may be discharged. Appeal motions are placed in a list, and are heard according to the order in which they there appear. New evidence is generally admissible upon the hearing of the appeal motion; and the hearing of the appeal is conducted in the same mode as that of the original motion.

Petitions.

2. Petitions presented in existing causes differ little in form from a bill. The title of the petition is the same as the title of the cause in which it is presented. If it relates to more causes than one it must be entitled in all the causes. If the cause to which it relates is attached to the Rolls Court, it is addressed to the Master of the Rolls himself (and not to the Lord Chancellor, as in the case of a bill marked for the Rolls Court); but if the cause is attached to the Court of a Vice-Chancellor, the address is to the Lord Chancellor. The mode of statement usually differs little from that in a bill, and the practice of dividing the statements into paragraphs numbered consecutively, though not compulsory, as in the case of bills, has been generally adopted with respect to petitions. At the foot of the prayer of the petition a note is added (analogous to the note at the foot of the bill, which gives the defendants' names), stating the persons who are intended to be served with the petition. The petition, however, is not filed in the first instance (as in the case of a bill), but is presented to the Lord Chancellor or Master of the Rolls, as the case may be, by leaving the same with his Secretary. The Secretary writes in the margin of the petition, "The Lord Chancellor (*or Master of the "Rolls*) doth order that all parties do attend him "hereon on [*the day and date of month*]; hereof "give notice forthwith;" which memorandum is technically called the answer to the petition. As soon as the petition has been answered, service is effected by the delivery of copies of the petition and answer thereon to the parties to be served or their solicitors; and (as in the case of motions) there must be two clear days between the service and the day of hearing. The evidence in support of the petition is given by affidavit, as on motions, and where a petition is opposed, the practice as to allowing it to stand over for the purpose of completing the evidence approximates closely to that before mentioned with regard to opposed motions.

Order of hearing.

In each branch of the Court a day in each week in which the Court is sitting is generally allotted for the hearing of petitions, and the petitions to be heard having been placed in a list, according to the order of their presentation, are called on in turn accordingly. Precedence is in the first instance generally given to unopposed petitions. Should any petitions remain undisposed of at the end of the petition day, they go into an adjourned list, preserving their original order, and are taken generally on the next petition day, in priority to the opposed petitions in the new list. The mode of hearing petitions has no peculiarity. After the Court has pronounced its order, the *original petition* and the counsel's brief are left with the Registrar, to enable him to draw up the order, and before the order is actually passed the original petition is filed in the Report Office, where it thenceforward remains.

If on the hearing of a motion or petition the respondent fails to appear, the order is not, generally speaking, granted without proof by affidavit of the notice of motion or the petition, as the case may be, being duly served on the non-appearing party.

3. The procedure by summons in an existing suit, for the purpose of obtaining some interlocutory direction from the Judge is the same in substance as that already explained in reference to proceedings in chambers after decree.

Applications upon summons are heard in order, according to a list affixed at the Judge's chambers.

The different classes of interlocutory applications to which the foregoing modes of procedure are respectively applicable cannot be accurately distinguished.

The proceeding by summons is generally adopted on applications for time to plead answer or demur, for leave to amend bills, for enlarging time for closing evidence and for production of documents, applications relating to the conduct of suits or matters, or to the guardianship, maintenance, or advancement of infants, or relating to matters connected with the management of property, for payment into Court of purchase monies under sales by order of the Court and investing the same, and in applications for payment to any person of dividends on interest of stocks, funds, or securities standing to the separate account of such person. Summonses at Chambers are frequently adjourned into Court, where they are disposed of in the same manner as motions. In some of the Courts adjourned summonses are placed on a list and heard on particular days, in others they are brought on by counsel moving in their turn on the ordinary motion days.

Applications by motion or petition are made where it is considered necessary or advisable to apply to the Court itself rather than to the Judge sitting in chambers. In such cases a motion is generally adopted where no detailed written statement of documents, facts, or circumstances is considered requisite to be brought before the Court. If such a detailed statement is considered necessary, the application is ordinarily by petition.

Thus applications for an injunction or receiver are commonly made by motion, and though in such a case the notice of motion conveys no information except that the plaintiff asks the Court to make the order applied for, the bill upon which the motion is founded contains a full statement of facts, and prays, among other things, the injunction or receiver sought. On the other hand, an application for the compromise of a suit, or for payment of money out of Court, is commonly made by petition, being grounded on documents or facts not previously stated to the Court in a

consecutive form, or not so stated with reference to the particular object in view.

It may perhaps be said that strictly interlocutory applications to the Court itself, that is, applications between the commencement of a suit and the decree, are more generally made by motion, and that applications after decree are more generally made by petition.

(V.) Revivor and Supplement.

Under the old practice of the Court, where a suit abated or became defective by the death or marriage of a party, or by a transmission of interest, or otherwise, a bill of revivor or of supplement was necessary. Under the Act of 1852 (15 & 16 Vict. c. 86), the procedure has been greatly simplified. The material section of the Statute in reference to this point enacts, that upon any suit becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill, in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive, or of the usual supplemental decree, may be obtained, as, of course, upon an allegation of the abatement of such suit, or of the same having become defective and of the change or transmission of interest or liability; and an order so obtained when served upon the party or parties who, according to the present practice of the said Court, would be defendant or defendants to the bill of revivor or supplemental bill, shall, from the time of such service, be binding on such party or parties in the same manner in every respect, as if such order had been regularly obtained according to the previously existing practice of the said Court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the Office of the Clerks of Records and Writs, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him.

Any party served may, within 12 days after service, apply to the Court to discharge the order on any ground which would have been open to him on a bill of revivor or supplemental bill; and when the party served is under any disability (other than coverture), the 12 days for moving to discharge run only from the time of the appointment of a guardian *ad litem* for such party.

The frequent necessity which existed under the old practice of filing supplemental bills for the purpose merely of bringing before the Court facts which had occurred subsequently to bill filed, was remedied by the same Act, which authorizes the introduction by way of amendment into the original bill of complaint of facts and circumstances which may have occurred since the institution of the suit, provided the cause is otherwise in such a state as to allow of an amendment being made in the bill.

If the cause is not in a state to allow of amendment, and the plaintiff desires to put in issue facts or circumstances which have occurred since the filing of the bill, he may do so by filing in the Record and Writ Office a supplemental statement either printed or written to be annexed to the bill.

This power of filing a supplemental statement is, however, not often resorted to, for no cause can be said to be in a state not allowing amendment until at all events replication is filed, and even after replication filed, leave might, in most cases, be obtained to withdraw replication and amend the bill.

Equity.

Statement of Mr. Barber as to England.

(VI.)—Enforcing Decrees and Orders.

The procedure of the Court for enforcing decrees and orders may be classed under two heads.

First. The old procedure, as amended and simplified, commencing with a writ of attachment, and, if necessary, followed by a Serjeant-at-arms or a writ of sequestration, or both, which is applicable to decrees and orders generally. In the particular case of an order to deliver up possession of lands the order may be enforced, not only by attachment, but by a writ of assistance.

Secondly. The new procedure by fieri facias and elegit and charging order, introduced in pursuance of the provisions of the Act for abolishing Arrest on Mesne Process (1 & 2 Vict. c. 110.)

Old procedure.

The old or ordinary procedure of the Court is available for the purpose of enforcing obedience to any direction contained in a decree or order, and there is no longer any distinction between enforcing a decree or order in favour of or against a party, or a person not a party. The first step now is service of a copy of the decree or order, which directs the payment of any money on the doing of any act, within a limited time, upon the person who is thereby ordered to make the payment or do the act, and no demand is now necessary. The copy served must have endorsed thereon words to the following effect:—

"If you the within-named A.B. neglect to obey "this decree (*or* order), by the time therein "limited, you will be liable to be arrested under "a writ of attachment issued out of the High "Court of Chancery, or by the Serjeant-at-arms "attending the same Court, and also be liable "to have your estate sequestered for the purpose "of compelling you to obey the same decree (*or* "order.)" The service must be personal, unless it be shown by affidavit that the party to be served is purposely keeping out of the way, in which case the Court will order service to be substituted on the solicitor or other agent of the person sought to be served. The subsequent process is in accordance with the warning given by the endorsement. In default of compliance a writ of attachment issues against the disobedient person, which writ is entrusted to the Sheriff for execution, and is not bailable. If the person attached is taken and detained in custody, and still remains disobedient, or if the Sheriff returns *non est inventus* to the writ of attachment, then the person prosecuting the decree is entitled to a commission of sequestration; or, in the latter event (viz., the return by the Sheriff of *non est inventus*), he may, if he so prefer, obtain an order for the Serjeant-at-arms, and so make one more attempt to enforce obedience by obtaining the control over the body of the disobedient person before issuing a sequestration against his property.

Form of sequestration.

The process of sequestration is in the form of a commission to certain persons (nominees in fact of the person prosecuting the decree or order, but technically officers of the Court), authorizing

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them to enter upon the real estate of the disobedient person, and to collect, receive, and sequester, not only all the rents and profits of his real estate, but also all his goods, chattels, and personal estate, and commanding them to detain and keep the rents, and profits, and personal estate, until compliance and contempt cleared.

Writ of Assistance.

Where a decree or order is made for delivering possession of any lands, and such decree or order is after due service disobeyed, the party prosecuting such decree or order is entitled to sue out a writ of assistance, which is directed to the Sheriff of the county in which the lands are situate, and orders him to eject the person who has been ordered to deliver up possession, and put into possession him to whom possession has been ordered to be delivered. The writ, in fact, corresponds very closely to the writ of "*Habere "facias possessionem,*" under which possession is obtained at common law after recovery in an action of ejectment.

Writ of Fieri Facias and Elegit.

Secondly—The writs of *fieri facias* and *elegit* (and *fieri facias de bonis ecclesiasticis*) are close copies of the similar writs at common law. When a decree or order contains a direction for the payment of money or costs within a limited time, by a particular person to another person, the person to whom the payment is directed to be made may (without any previous service of the decree or order, unless where the payment is directed to be made within a certain time after service), after the expiration of one month from the entry of the decree or order, and the due expiration of the time limited, sue out either of these writs against the person by whom the payment is to be made.

Comparative efficacy of the two forms of procedure.

In reference to the comparative efficacy and advantage of these two forms of procedure (apart from the extent of their applicability which has been already noticed), it is to be observed that the old procedure gives at once a concurrent remedy against the body and the property. The attachment is a process against the defendant as for contempt, and his being taken into custody works no satisfaction of the claim, as is the case where a defendant is taken under a *ca. sa.* at common law. The person prosecuting the decree may, therefore, proceed to sequestration at the very time that the disobedient person is in custody; and, indeed, there can be no reason, if he think fit, why he should not, if circumstances render it more convenient, issue a fi. fa. or elegit while the custody continues, instead of proceeding to a sequestration.

Attachment is, therefore, commonly the first step. On the other hand it is to be noticed that where the decree or order directs payment of money or costs, without any reference to service of the decree, and property is known to exist, the proceeding by fi. fa. or elegit is often more convenient than attachment, because it requires no previous service of the decree or order; besides which, according to the present practice, a party may not only have a writ of attachment after suing out a fi. fa. unsuccessfully, but even where the fi. fa. has been partially productive, he may have a writ of attachment in respect of the balance remaining due under the decree or order.

Serjeant-at-arms.

With reference to the step of obtaining an order for the Serjeant-at-arms, which the party prosecuting the decree or order may or may not resort to (as he prefers) before proceeding to sequestration, it may be mentioned that the only advantage possessed by the Serjeant-at-arms over the Sheriff is, that he can take the party who is in contempt wherever he may be found within the jurisdiction of the Court, whereas the Sheriff can only execute the attachment within his own county; that the fees of that officer are heavy; and that the option of obtaining an order for the Serjeant-at-arms is hardly ever exercised at the present day.

Under the recent practice, decrees and orders made in a matter are enforced in the same way as those made in a suit.

(VII.) Rehearings and Appeals.

A party who is dissatisfied with a decree or order of the Court, may present a petition asking to have the cause reheard, either by the Judge who made the decree or order, or by the Lord Chancellor. A petition for rehearing before the Judge who pronounced the original order is occasionally resorted to when, through oversight or miscarriage, the case has not been properly presented to the Judge; or when unexpected complications have arisen in settling the form of decree or order before the Registrar, and it is impossible to obtain the necessary directions from the Court in the usual way, by having the cause spoken to on the minutes, or in fact otherwise than by a formal and regular hearing. A rehearing by way of appeal is the common course where a party is dissatisfied with the decision of the Judge who originally heard the case. It is, however, to be observed that even where the object is to obtain a rehearing by way of appeal, the appeal is, *in theory*, not the removal of the cause from a subordinate Court to a higher one (as in the case of a writ of error from one of the Common Law Courts to the Court of Exchequer Chamber), but a rehearing of the same cause in the same Court by a Judge of higher judicial authority. In fact, until the decree is actually enrolled there is no limit to the power of the Court to rehear, except that neither the Master of the Rolls nor any of the three Vice-Chancellors has power to rehear decrees made by any other of such Judges, not being his own predecessor in office.

The suitor's right to a rehearing is not, however, co-extensive with the power of the Court to rehear, as above stated, but is limited in various ways by the general practice of the Court and the recent orders.

Thus by the settled practice, where a cause has been once reheard before the Court of Appeal, there can be no further rehearing without leave obtained upon a special application, but the suitor may as of course have his cause first reheard by the Judge who heard it in the first instance or his successor in office, and then claim a second rehearing before the Court of Appeal, without a special application for that purpose. By the recent orders of the Court, there can be no appeal or rehearing after five years from the date of the decree or order complained of, unless the Lord Chancellor or Lords Justices consider that the peculiar circumstances of the case render it just and expedient to enlarge the time.

The procedure in order to obtain a rehearing is as follows:—A petition is presented, which in all cases except where a rehearing is sought before the Master of the Rolls of a decree or order pronounced by himself or any of his predecessors in office, is addressed to the Lord Chancellor; but in the exceptional case mentioned to the Master

of the Rolls. At the foot of the draft petition is a certificate signed by two counsel as to the case being a proper one to be reheard; but on a recent occasion when the property which formed the subject of appeal was very small, the Court allowed the petition of appeal to be set down upon the certificate of one counsel only. The petition is presented in a similar manner to that explained with respect to interlocutory petitions, and answered by directing the petition to be set down to be heard upon deposit of 20*l.* with the Registrar, and upon giving the undertaking as to costs, which will be presently mentioned. It is not, however, served in a similar manner, but the petition, having been answered, is left with the Senior Registrar, who draws up an order (which follows closely the terms of the answer) to set down the petition for hearing, on the petitioner within a week depositing 20*l.* with him, and by himself or his solicitor undertaking to pay such costs, if any, as the Court may think fit to award in respect to the proceedings since the decree complained of. The deposit is required as some security for the costs of the rehearing. The order so drawn up is served on the solicitors of the opposite parties, who obtain from the Registrar an office copy of the petition of rehearing, upon application for the same. Where the rehearing is by way of appeal, it may be heard, according to circumstances, either by the Lord Chancellor and Lords Justices (as constituting the full Court of Appeal), or by the Lord Chancellor alone, or by the Lords Justices alone. Upon the hearing of the appeal either party is at liberty to read and rely upon any evidence properly taken in the cause for the purpose of the original hearing, whether referred to or relied upon before the Judge below or not; but though fresh evidence is not generally receivable, it is competent to the Court of Appeal to direct the examination *vivâ voce* of parties or witnesses though not examined in the Court below, and this power is not unfrequently exercised. Should the appeal come before the Lords Justices alone, the decree of the Court below is affirmed, unless they both concur in reversing or varying it, or express a desire that the case should be re-argued before the Lord Chancellor or before the full Court of Appeal. There appears to be no settled rule as to the costs of appeals or rehearings. Like other costs, they are in the discretion of the Court.

Appeals from interlocutory orders made on motion or summons, stand upon a different footing from other appeals. Orders made upon motion or summons are appealed from as follows: If the party moving is unsuccessful below, he simply renews his motion before the Judge of Appeal, and if a party against whom the motion is made wishes to appeal, he does so by moving to discharge the order made on motion. In either case entirely new evidence is generally receivable, subject only to the observation that if the view taken by the Judge below is departed from only in consequence of the newly adduced evidence, that is a material circumstance to be considered by the appellate Judge in dealing with the question of costs.

Orders made upon exceptions to answer, though interlocutory merely, are appealed from in the same way as already explained with respect to decrees.

Orders made upon petition are appealed from by petition of rehearing, with certificate of two counsel at the foot, but are answered and served in the same way as common petitions, and are set down to be heard with the cause petitions on petition days, instead of being in the list of rehearings and appeals, and no deposit is required.

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Decrees and decretal orders made upon motion for decree under the practice already explained, have been, by a special order of the Court, placed upon the same footing, with respect to rehearing and appeal, as other decrees.

Appeals from orders on motion for decree.

The right to present a petition of rehearing or appeal may be intercepted by enrolment, after which step a decree or order can be reversed or altered only upon appeal to the House of Lords, or by bill of review. Any party may enrol a decree or order immediately after it has been passed and entered, unless some other party should have entered a *Caveat*. The effect of a *caveat* is to interpose a delay of 28 days between the leaving of the docket of the decree or order for the Lord Chancellor's signature and the actual signature. Upon the docket being left, notice of that fact is given by the Record and Writ Office to the person entering the caveat, and unless previously to the expiration of the 28 days, a petition of appeal has been actually set down for hearing, the docket is signed as if no caveat had been entered, and the enrolment is then in contemplation of law complete. After the expiration of six calendar months from the date of a decree or order, it can only be enrolled upon special application to the Judge to whose Court the cause is attached on notice to all parties. After the expiration of five years no enrolment is to be allowed, subject only to the qualification that the Lord Chancellor or the Lords Justices may, *where under the peculiar circumstances of the case* it shall seem just and expedient, enlarge that period.

Enrolment.

(VIII.)—Summary Statutory Jurisdiction of the Court.

By various Statutes, the most important of which will be found mentioned in the list at the foot of this statement, a special summary jurisdiction is conferred upon the Court of Chancery in reference to a great variety of matters, the general nature of which is indicated in the list.

Jurisdiction.

As a general rule the procedure in these cases is by petition, entitled in the matter of the particular Act, and in the matter of the particular trust or other subject of the petition, marked with the name of the Lord Chancellor and of one of the Vice-Chancellors, or with the name of the Master of the Rolls, according to the selection of Court made by the petitioner's solicitor, and presented by some person authorized by the particular Statute to make the application.

Procedure generally by petition.

The petition is addressed and presented in the same way as already described with respect to petitions in a cause (subject to the observation that in any exceptional case where the Master of the Rolls has no jurisdiction the petition cannot, of course, be addressed to him), and the practice as to hearing and appeal differs little as a general rule from that which obtains with respect to cause petitions, though in all cases the limits of the jurisdiction must be sought in the particular Statute.

Some few of the Statutes, however, mentioned in the schedule, give rise to peculiarities of procedure deserving of special mention.

Peculiarities of procedure.

1. The Trustee Relief Act has for its general object the exoneration of trustees from liability,

Trustee Relief Act.

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by allowing them to pay or transfer into Court, or deposit in Court, any monies, or stocks, or securities held by them upon any trust the performance of which may have become unsafe, without the direction of the Court. Under this Act the first step consists of an affidavit made by the trustee entitled in the act and in the matter of the trust, describing the trust fund to be brought into Court, the instrument of trust affecting it, and the names of the persons interested to the best of his belief.

The subsequent proceedings relating to the trust fund are by petition, and differ little (if at all) from the general procedure applicable to the class of Statutes under consideration.

Settled Estates Act.

2. The procedure under the Acts relating to leases and sales of settled estates (19 & 20 Vict. c. 120.) presents certain peculiarities. In proceedings under this Act, the first step is the petition. After the petition has been answered, if any married woman be a consenting party to the application, her consent is obtained by separate examination; and if infants who have no guardian are interested, an application is made by summons at chambers for the appointment of a guardian. As soon as the petition is properly constituted (so to speak) as respects parties, an application is made at chambers for directions as to the newspapers in which notice of the intended application is to be inserted; and the petition does not come on for hearing until after the expiration of twenty-one days from the publication of the last of the advertisements. The subsequent procedure under this Act presents no special feature.

Sir Samuel Romilly's Act.

3. The procedure under the summary jurisdiction created by Sir Samuel Romilly's Act (52 Geo. 3. c. 101.) presents the peculiarity of the necessity for the fiat of the Attorney-General, or, during the vacancy of that office, of the Solicitor-General, authorizing the presentation of the requisite petition. And in reference to appeals under this Act, it is to be observed that an appeal from any order made by the Master of the Rolls lies not to the Lord Chancellor but only to the House of Lords directly.

Charitable Trusts Act.

4. Under the Charitable Trusts Act, 1853, a jurisdiction is conferred exerciseable at Chambers, and the first step under this Act is by summons.

Lord St. Leonards' Act.

5. Under Lord St. Leonards' Act (22 & 23 Vict. c. 35. s. 30.), as subsequently amended, a trustee, executor, or administrator may, by summons at chambers, and in the latter case upon a written statement signed by counsel, obtain the opinion, advice, or direction of the Court upon any question respecting the management of the trust property or the assets of any testator or intestate.

Defence Act.

6. Under the Defence Act, 1860 (23 & 24 Vict. c. 112.), the applications relating to monies paid into Court, which in the case of other compulsory taking of lands are made by petition, are made by summons.

Special cases under orders of Court.

7. By one of the general orders of the Court the summary jurisdiction of the Court, which under certain Statutes would but for that order have been exercised upon petition in open Court, is made exercisable at chambers, in respect to the following matters, that is to say:—

(*a.*) Applications under the 36 Geo. 3. c. 52. s. 32., in all cases where the sum paid into the Bank or the stock transferred into the name of the Accountant-General under such section does not exceed 300*l.* cash or 300*l.* stock, as the case may be.

(*b.*) Applications under the Trustee Relief Acts, in all cases where the trust fund does not exceed 300*l.* cash or 300*l.* stock, as the case may be.

(*c.*) Applications under "The Trustee Act, 1850," and the Extension Act of 1852, in all cases where any decree or order has been made by the Court for the sale or conveyance of any real estate.

(*d.*) Applications on behalf of infants under the Statute 1 Will. 4. c. 65. ss. 12, 16, and 17, in all cases where the infant is a ward of the Court or the administration of the estate of the infant, or the maintenance of the infant is under the direction of the Court.

List of Statutes conferring a summary Jurisdiction on the Court of Chancery.

Act for the Discovery of the Death of Tenants for Life and other Persons having limited Interests (6 Anne c. 18.)

Legacy Duty Act (Infants' Legacies) 36 Geo. 3. c. 52. s. 32.

Charities, Sir S. Romilly's Act (52 Geo. 3. c. 101.)

Unclaimed Stock (56 Geo. 3. c. 60., 8 & 9 Vict. c. 62.)

Property belonging beneficially to infants and femes covert (1 W. 4. c. 65.)

Act for abolition of fines and recoveries (3 & 4 W. 4. c. 74. ss. 33, 48.)

Custody of infants (Talfourd's Act) 2 & 3 Vict. c. 54.

Defence Acts, 1842 and 1860 (5 & 6 Vict. c. 94., 23 & 24 Vict. c. 112.)

Attornies and Solicitors Act (6 & 7 Vict. c. 73.)

Lands Clauses Consolidation Act (8 Vict. c. 18.)

Trustees Relief Acts (10 & 11 Vict. c. 96., 12 & 13 Vict. c. 74.)

Trustee Acts (13 & 14 Vict. c. 60., 15 & 16 Vict. c. 55.)

Charitable Trusts Acts, 1853 and 1855 (16 & 17 Vict. c. 137., 18 & 19 Vict. c. 124.)

Act authorizing infants to make settlements on marriage (18 & 19 Vict. c. 43.)

Leases and sales of settled estates (19 & 20 Vict. c. 120., 21 & 22 Vict. c. 77.)

Lord St. Leonards' Act (22 & 23 Vict. c. 35. s. 30.)

(Signed) C. CHAPMAN BARBER.

II.—3. MR. JELLETT'S STATEMENT on the PRACTICE and PROCEDURE of the COURT OF CHANCERY in IRELAND.

Statement of Mr. Jellett as to Ireland.

The equitable jurisdiction of the Court of Chancery in Ireland is exercised either in a plenary suit under the original jurisdiction of the Court, or in a summary way, either under its general jurisdiction, or by virtue of some special authority conferred by statute.

A plenary suit at the Equity side of the Court of Chancery in Ireland, whether instituted on behalf of the Crown, or of those whose rights are under its protection, or by a subject, is, according to the existing practice of that Court, commenced by preferring a Petition, called a Cause Petition, to the Lord Chancellor, or the Holder of the Great Seal of Ireland for the time being. This mode of procedure was first introduced by the Court of Chancery (Ireland) Regulation Act, 13 & 14 Vic., c. 89, and has since in practice superseded the procedure by Information or Bill; for although under the provisions of the 3rd and 4th sections of that Act, the Court of Chancery possesses the power, either in the exercise of its own discretion or upon the application of any party interested in the subject matter of the suit, to direct that the suit shall be instituted or prosecuted by way of Information or Bill, this jurisdiction does not appear to have been exercised in any instance, and has in practice become obsolete. It will be convenient to consider the practice and procedure of the Court of Chancery in Ireland under the following heads:—

1. The Procedure in a General Cause Petition suit down to the Primary Decretal Order.
2. The Procedure in a General Cause Petition suit after the Primary Decretal Order until the Final Order.
3. The Procedure in particular kinds of suits (including proceedings under the 15th section of the Chancery Regulation Act).
4. Interlocutory and other summary Applications in suits.
5. Revivor and Supplement.
6. The mode of enforcing Decretal and other Orders.
7. Rehearings and Appeals.
8. Summary Statutory Jurisdiction, and Summary Jurisdiction in Minor matters.

Before discussing these divisions of the subject in detail, it may be well to premise some observations applicable to Cause Petitions generally.

NATURE AND FORM OF CAUSE PETITIONS.

A Cause Petition, according to the construction which has been given to the Court of Chancery Regulation Act by the present Lord Chancellor of Ireland, is not strictly a pleading. Its precise nature and effect will be better understood from a description of its contents than from any formal definition.

A Cause Petition in form consists of the following parts; the Title, which is in these words: "Cause Petition under the Court of Chancery (Ireland) Regulation Act, 1850;" the Address, which contains the name of the Lord Chancellor, or the person for the time holding the Great Seal, to whom the Cause Petition is addressed; the Statement, which contains a narrative of the facts in respect of which the assistance of the Court is required; and the Prayer, which contains a statement of the relief to which the Petitioner conceives himself to be entitled. The name of the Petitioner is set forth in the introduction of the statement thus: "The humble Petition of A. B., of showeth." The Respondents or Defendants to the suit are named in the Prayer, no person being deemed to be a Respondent to the suit whose name is not so inserted.

Parties to suits.

The rules which govern the selection of the necessary parties to a suit are, with some exceptions, which will be noticed in the Statement of Differences, the same as those which prevail in the Court of Chancery in England. As a general rule, all persons interested in the subject matter of the suit, with respect to its object, are necessary parties, and all persons against whom any account, payment, conveyance, or direct relief is sought, should be made respondents to the Petition; but formal parties who according to the practice of the Court of Chancery in England are bound by the proceedings upon being served with a copy of the Bill, are not necessary parties *in the first instance* to a suit by Cause Petition in Ireland; and to a Cause Petition for foreclosure, which in Ireland seeks for a sale of the mortgaged premises as well as a foreclosure, Judgment Creditors and other Incumbrancers are not necessary parties in the first instance, unless they are in possession or receipt of the rents of the mortgaged property otherwise than by a Receiver or Sequestrator. In any of the foregoing cases, the Court, however, may at a subsequent stage of the suit direct persons not parties, to be served with notice of the proceedings, so as to bind their rights, or the persons so omitted may afterwards file charges in the Master's office; in either of which cases they become parties to the suit as effectually as if they had been originally named as such.

Adding parties.

Misjoinder.

In case of a misjoinder of parties as Petitioners, the Court possesses the same power of modifying its decretal order to suit the nature of the case, as the Court of Chancery in England exercises under similar circumstances.

Interrogatories.

Interrogatories are not permitted to be annexed to the Cause Petition without the permission of the Court, which is in practice obtained by motion on notice, supported by an affidavit showing the necessity of administering them; when annexed they are numbered consecutively, and need not be confined to matters stated in the Cause Petition, but according to the prevailing practice in Ireland, interrogatories are seldom if ever resorted to at this stage of the suit, and the use of them has, except under special circumstances, been discountenanced by the present Lord Chancellor of Ireland.

Mode of verifying a Cause Petition.

The Cause Petition must bear the signature of a Counsel and Solicitor, it is written on paper prescribed by the rules of the Court, and when engrossed must be verified by an affidavit. This verification may be in one or other of two forms.

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If the Cause Petition be verified by the Petitioner, the form is as follows:—

In the Matter of A. B., *Petitioner.*
C. D., *Respondent.*
Cause Petition under the Court of Chancery (Ireland) Regulation Act, 1850.

I, A. B., the Petitioner in the above written Petition, make oath and say that so much of the above written Petition as relates to my own acts and deeds is true, and so much thereof as relates to the acts and deeds of any other person, I believe to be true.

If the Cause Petition cannot be verified by the Petitioner, either in consequence of his absence, his ignorance of the facts, or any other cause, it may be verified in detail by an affidavit made by any other party acquainted with the facts, which affidavit should explain the reason of the Petitioner not verifying the Petition himself. An affidavit verifying the Cause Petition is not required in the case of a suit instituted by the Attorney or Solicitor-General. The affidavit verifying the Cause Petition, if sworn in Dublin, may be made before the Deputy-Keeper of the Rolls, or before one of the Masters' Examiners, and if made in the country, before one of the Masters Extraordinary of the Court; and the Cause Petition when thus prepared and verified is filed in the office of the Deputy-Keeper of the Rolls. After this has been done the subsequent steps in the suit depend upon the nature of the cause, and this naturally leads to the first division of the subject.

I. The Procedure in a General Cause Petition Suit down to the Primary Decretal Order.

General Cause Petitions.

All plenary suits seeking equitable relief, including Cause Petitions stating a special case, may be commenced by General Cause Petition, at the peril of the Petitioner being visited with the payment of the costs of the suit, if the Court should be of opinion that the case could have been dealt with under the 15th section of the Chancery Regulation Act.

Mode of selecting the Master for the suit.

When a General Cause Petition is filed, the Petitioner's Solicitor ought, according to the strict practice of the Court, in all cases (except Cause Petitions stating a special case) to lodge in the office of the Clerk of Appearances and Writs a docket stating the names of the parties to the suit; and it is the duty of that officer on the following day to mark the docket with the name of one of the Masters of the Court, who is selected in rotation, and to whose office the suit thenceforth becomes attached. In practice, however, this course is not strictly pursued, as many suits involve no reference to a Master, and the Petitioner generally defers to (as it is called) *strike* a Master in the cause until the necessity of a reference is ascertained, or until it is requisite to do so for the purpose of taking some step in the cause, such as appointing a Guardian to appear and answer for a minor Respondent.

Service of General Cause Petition.

Service of the Cause Petition, in ordinary cases, is effected by delivering to the Respondent, or leaving at his residence with some member of his family or household, a notice of the filing of the Cause Petition in the following form:

The Court of Chancery (Ireland) Regulation Act, 1850.

A. B., Petitioner.
C. D., Respondent.

Take notice that a Cause Petition has been filed by the above-named Petitioner, on the day of in the office of the Deputy Keeper of the Rolls of Her Majesty's High Court of Chancery in Ireland, by which it is prayed that (*here the prayer is stated*).

And you are served with this Notice in order that if you think proper you may file any affidavit or affidavits on your behalf in respect to the matters stated therein, and appear at the hearing of such petition as you may be advised; and your attention is directed to the copies annexed hereto of so much of the General Orders of the Court as relates to the entering of appearances to, and the hearing of Cause Petitions under the said Act, for your guidance in relation to the said petition and this notice.

Dated this day of

X. Y., Solicitor for the Petitioner.

To this Notice is annexed a copy of so much of the General Orders of the Court as regulates the time for appearing and filing affidavits in answer to the petition.

If service of the above notice cannot be effected in the manner above described, either in consequence of the Respondent being resident abroad or by reason of his keeping out of the way so as to evade service, the Court will permit service of the notice of filing the petition to be substituted under the general jurisdiction of the Court. This jurisdiction is exercised upon the same principles which prevail in the Court of Chancery in England, and with the view of securing that knowledge of the filing of the petition shall come to the Respondent.

In suits "respecting lands or hereditaments in Ireland, or any charge, lien, or incumbrance affecting them, or concerning money vested in any government or other public stock or public shares in public companies or concerns, or the dividends or produce thereof," the Court will, under the provisions of the Statute 2 William IV., c. 33 and 4 and 5 William IV., c. 82, direct that service upon the receiver, steward, or the person who receives the rents of the lands and remits them to the owner, shall be deemed good service upon him, or will give liberty to serve such party out of the jurisdiction, and declare that personal service out of the jurisdiction on *any* party shall be deemed sufficient. Service may also be substituted under these Acts on a Respondent absconding to avoid service.

After service of notice of the petition has been effected in some one of the foregoing ways, the Respondent (not being an infant or person of unsound mind) is, in cases of actual or constructive personal service, allowed eight days from the date of the service to enter an appearance in the office of the Clerk of Appearances and Writs. In cases of substituted service, or service out of the jurisdiction, the Court fixes the time for appearing by the order which directs the service. All compulsory process to enforce appearance is virtually abolished. If no appearance be entered within the time limited for that purpose, the Respondent is not entitled to notice of the further proceedings in the cause, unless the Court directs that notice shall be given, or on a special application, permits the Respondent to enter an appearance. In General Cause Petitions, the Respondent may, however, though he has not appeared, file affidavits in answer to the petition, and appear at the hearing and defend his rights.

Where a Respondent is an infant or person of unsound mind, the Master for the suit is at once ascertained, in the manner before pointed out, and an application made to him to appoint a guardian *ad litem*, who is usually some near relative of the person under disability.

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After the petition has been filed no amendments are permitted to be made without a special order of the Court, which, if applied for after the Respondent has appeared, must be upon notice to him, setting forth a draft of the proposed amendments. The amendment is made by a statement at the foot of, or annexed to the petition, containing the additions to, or qualifications of, the Statement and Prayer of the petition, and the Title of the cause, as amended, with the date of the amendments, is stated in the margin of the engrossment of the amendment, no alteration, erasure, or interlineation being under any circumstance permitted to be made in the engrossment of the original petition. The permission to amend the petition being in the discretion of the Court, and only granted upon special motion, there is no particular time limited by the practice of the Court, for making the application for that purpose, and the petitioner may introduce by amendment statements of matters which have occurred since the filing of the petition, and is not obliged to resort to a petition of supplement for the purpose.

Defence.

The course of defence to a General Cause Petition is as follows:—

Since the passing of the Chancery Regulation Act, all defences, whether in law or fact, to a Cause Petition, may be raised by the affidavit of the Respondent in answer to the petition. This change has resulted in the practical abolition of pleas, demurrers, and disclaimers, as separate modes of defence. All objections and answers to the relief or discovery sought by the Petition are in practice taken by the affidavit of the Respondent in answer.

As the petition is not considered as, strictly speaking, a pleading on behalf of the Petitioner, neither is the affidavit in answer regarded as strictly a pleading on the part of the Respondent; it is, in fact, as will be seen hereafter, a mixture of both pleading and evidence, without any very accurate discrimination between the two. An affidavit in answer by the Respondent must be filed in every case in order to entitle him to insist upon any objection relying upon facts which do not appear on the face of the Cause Petition, as well as to prevent the facts stated in the Cause Petition from being taken as admitted. The affidavit in answer to the petition is usually drawn, and must be signed by Counsel, and intituled in the same manner as the verifying affidavit of the Cause Petition. It is engrossed in paragraphs, which are numbered consecutively; and according to the general orders of the Court, every statement contained in the petition, and not denied or qualified by the affidavit of the Respondent in answer, is deemed to be admitted for the purposes of the suit. It ought to state the facts which are within the Respondent's knowledge and his means of knowledge, and what facts are known to him by information, and the sources of his information. It ought to state all the points of law and fact upon which the Respondent relies, as a defence to the suit, a Respondent not being entitled, except in the case of infants, lunatics, or persons of unsound mind, to rely at the hearing upon any matter of defence which is not stated in his affidavit in answer.

At the end of the affidavit in answer is placed the signature of the Respondent and the Jurat. The form of oath administered to the Respondent is the usual form of oath administered to a person making any other affidavit, and is an absolute assertion of the truth of the statements contained in the affidavit in answer, according to the manner in which such statements are made, and the oath may be taken before the same persons as are authorized to administer the oath verifying the cause petition. It seems doubtful whether the verification of the affidavit in answer, by the oath of the Respondent, can in any case be dispensed with, even by the consent of all the parties to the suit; and cases have occurred in which considerable difficulty has arisen in the way of the Respondent making a defence in consequence of the impossibility of procuring his attendance to swear to the truth of his affidavit in answer. The affidavit in answer, when engrossed and sworn, is filed in the office of the Deputy Keeper of the Rolls.

Time for filing the affidavit in answer.

The time allowed for filing an affidavit in answer to a Cause Petition, according to the present practice of the Court, is four weeks from the service of the Cause Petition, or until the Petitioner has set down the cause for hearing, or in cases of service effected out of the jurisdiction of the Court, such further time as the Court may by its order limit for that purpose.

Exceptions for insufficiency.

As interrogatories are seldom annexed to a Cause Petition, and as suits for a discovery have in practice become obsolete, in consequence of the enlarged powers now possessed by the Courts of law for enforcing discovery under the provisions of the Common Law Procedure Act, exceptions to an answering affidavit for insufficiency are practically unknown; they may still be taken for either prolixity or impertinence, but this course is seldom resorted to.

Mode of taking of Evidence in General Cause Petitions.

If the Respondent requires to adduce evidence in support of his affidavit in answer, he may do so by all or any of the three following ways:—

Modes of taking evidence.

1. By affidavit. 2. By an oral examination before the Court itself, or the Examiner of the Court, or a Special Examiner; or 3. By written interrogatories—a practice which is now never resorted to, except for the examination of witnesses residing out of the jurisdiction of the Court, or in cases in which they are administered to the Petitioner with the view of obtaining a discovery of some fact from him, and as a substitution for a cross bill.

Time for filing affidavits in proof by the Respondent.

If the Respondent proposes to prove by the affidavits of third parties all or any part of his case as made by his affidavit in answer, such affidavits must be filed within the time allowed for filing the Respondent's affidavit in answer. Any person who has made an affidavit is bound to attend before the Examiner of the Court for cross-examination, upon receiving notice so to do. There is no time fixed by the practice of the Court for this cross-examination to take place. It may take place after the Petitioner has made his proofs, whether by affidavit or otherwise, or, in fact, at any time before the hearing of the cause. There is no power of enforcing this cross-examination before the Court at the hearing. In other respects the cross-examination of witnesses who have made affidavits is conducted in the same manner as in England. The depositions of witnesses, on cross-examination before an Examiner, are taken down in the third person by the Examiner in the form of a narrative, and when completed are read over to the witness, who signs them.

Cross-examination of witnesses who have made affidavits.

No replication is required, according to the prac-

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tice in Cause Petitions, in order to bring the cause to an issue between the parties; if, indeed, it can be said with propriety that the parties are ever at issue before the cause is called on for hearing. The Respondent is bound to file all affidavits in support of his answering affidavit in the first instance, and no affidavit can be used at the hearing merely in support of the affidavit in answer, which has not been filed within the time allowed by the General Orders of the Court for filing the affidavit in answer, or such extension of that time as the Court may fix, on a special motion for the purpose. But the Respondent, as will be seen hereafter, is permitted as of course to file affidavits in answer to any *new* matter alleged in the affidavits filed by the Petitioner in support of the petition, and afterwards either party may, by the permission of the Lord Chancellor, file additional affidavits in answer to any *new* matter alleged by the affidavits of the opposite party, without any further restriction as to the right or time to do so than what may be imposed by the discretion of the Lord Chancellor on the hearing of the motion when the permission is granted.

The parties exhaust their cases by alternate affidavits.

Mode of taking oral evidence.

The evidence in Cause Petitions is most frequently taken by affidavit; but it may happen that the Respondent requires to adduce oral evidence, in which case he applies by motion on notice to the Court, stating the names of the witnesses proposed to be examined, when the Court fixes the time and mode of examination, whether before the Court itself or an Examiner. This application must generally be supported by an affidavit showing that evidence by affidavit could not be procured. No time is limited by the practice of the Court within which this application must be made. It may be made at any time before the hearing, and in practice the Court usually directs the examination to take place at the hearing, an oral examination before the Examiner being seldom resorted to. The attendance of a witness who has not made an affidavit in the cause, is enforced by a subpœna, which is prepared by the solicitor of the party who requires his attendance, and is sealed by the Clerk of Appearances and Writs; and such witness is bound to attend in whatever part of Ireland he may reside. The Court of Chancery in Ireland does not possess the power of enforcing the attendance of a witness resident out of the jurisdiction.

Petitioner's evidence in reply.

When the Respondent has thus made his case by an affidavit in answer, and affidavits in support of it, the Petitioner is allowed three weeks from the date of the filing of the affidavit in answer, to file affidavits in support of the Petition, and also in reply to any matter alleged by the affidavits filed on behalf of the Respondent. If the Petitioner considers it necessary to resort to oral evidence in support of the petition, or in answer to the affidavits filed by the Respondent, he can adduce it in the same manner as the Respondent in support of his affidavit in answer, and there is no time limited by the practice of the Court within which he is bound to do so.

Statements in the affidavit in answer if not denied are admitted.

All statements contained in the affidavit in answer, and not denied by the affidavit in reply, are taken as admitted for the purposes of the suit.

Respondent's evidence by way of rejoinder.

If the affidavits filed on behalf of the Petitioner in support of the Petition contain any *new* matter not referred to in the Petition, the Respondent is allowed a fortnight, within which time he may file as of course affidavits in answer to such *new* matter only; and if these last affidavits disclose any *new* matter requiring a reply, the Petitioner may apply, by motion to the Lord Chancellor, for liberty to file affidavits in reply to such *new* matter; and the Respondent may, in the same manner, apply for liberty to rejoin to any *new* matter contained in these last affidavits, and so on in the like manner. There is no time fixed by the practice of the Court for making applications for these purposes; nor is there any limit to the filing of alternate affidavits by each side, except what may be imposed by the Court, in cases in which it is necessary to make a special application for liberty to file such affidavits, and the costs of the motion are generally made costs in the Cause. The application for liberty to file these affidavits is made by special motion to the Lord Chancellor, and the permission, if granted, is made subject to such conditions as the Court may think proper to impose.

As it may happen, either from the nature of the case, or from mistake or fatality, that the parties may not be able to file their affidavits within the time limited according to the foregoing rules for their doing so, the Court has power, on any just ground, to enlarge the time for filing affidavits, or in cases in which the time has been suffered to pass without affidavits having been filed or any application made to enlarge the time for doing so, to permit affidavits to be filed by either party, if the omission has occurred through an accident or fatality. An application for either of the foregoing purposes is made by a special motion, which in ordinary cases is heard at the Rolls; but if the cause has, at the time when the application is made, been set down for hearing, the motion is heard before that branch of the Court in which the cause stands for hearing.

The time fixed by the General Orders of the Court, after which the Petitioner is at liberty to set down a cause for hearing, is four weeks from the service of the notice of the filing of the cause petition, but according to the prevailing practice, it is not set down for hearing until the periods fixed either by the General or Special Order of the Court for filing affidavits on each side has expired.

If a General Cause Petition is not set down for hearing for two whole Terms after the time when it might have been set down, in ordinary cases it stands dismissed under the General Orders of the Court, unless the Court, on a special motion, either enlarges the time for setting down the cause, or reinstates it after it stands dismissed under the General Orders. As it may happen by reason of the filing of interrogatories by either party, or the necessity of serving some of the parties out of the jurisdiction of the Court, that the Cause Petition cannot be set down for hearing within the above time, the Petitioner may enter a *caveat* in the Registrar's office, which, if not set aside by the Court or withdrawn, has the effect of keeping the cause in Court for two terms in addition to the above period, and this *caveat* may be renewed by the Court on special motion. The General Orders above referred to do not, however, extend to suits for an injunction in the nature of a writ of estrepement, nor suits for the perpetuation of testimony, which are never brought to a hearing.

The Mode of bringing a General Cause Petition to a Hearing.

General Cause Petitions *may* be set down for hearing on an objection for want of parties, but this practice is never adopted. The alterations as to the necessary parties to a cause petition,

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introduced by the Chancery Regulation Act, and the subsequent General Orders of the Court having rendered objections for want of parties less frequent, such objections, when raised, are invariably discussed at a plenary hearing of the cause.

There is, practically speaking, but one mode of bringing a general cause petition to a hearing, namely, upon the cause petition, and the affidavits in answer, and the affidavits or other evidence produced by each party in support of their respective cases. This is done by the Petitioner's Solicitor lodging with the Registrar of the Court a docket containing the names of the parties to the suit, distinguishing those who have been served with notice of the petition, and in the case of parties who have appeared, stating the names of their Solicitors. A copy of the petition is at the same time lodged with the Registrar, who then enters the case for hearing in its order, and the Petitioner's Solicitor serves all parties who have appeared in the suit with notice that the cause has been set down. All causes are in the first instance set down to be heard before the Lord Chancellor. No cause can be set down for hearing during the term, without special leave, later than the second day of the term, and after that day the general list of causes for the term is made out, and the Lord Chancellor selects from this list a certain number of causes for hearing before the Master of the Rolls.

The Hearing and Primary Decretal Order.

When the cause is called on for hearing, the petition is formally opened by the Junior, and stated by the Senior Counsel for the Petitioner, after which the Junior Counsel for the Petitioner reads the Petitioner's proofs. The Counsel for the Respondent then follow in the same order, after which the Junior Counsel for the Respondent addresses the Court, and the Junior Counsel for the Petitioner replies. The costs of the attendance of three Counsel at the hearing of the cause are not taxed unless by a special order of the Court.

The Court having pronounced its Decree, or as it is usually called, Decretal Order, a full note of it is taken by the Registrar of the Court, who makes up the notes of the decretal order himself, adding in every case the usual consequential directions. The notes of the decretal order are made up by the Registrar upon his own responsibility, with the assistance of the Court, if necessary; but it is customary, in cases of any complexity in the terms of the decretal order, for the Solicitors at each side to furnish the Registrar with a minute of the terms of the decretal order, as agreed to by them.

All applications to amend the notes of the decretal order must be made within six days from the time when the decretal order has been pronounced.

The decretal order is afterwards made up from the Registrar's notes in his office; when settled, it contains the title of the cause, the date of the decretal order, the Judge before whom the cause was heard, the names of the Counsel for the different parties, and on whose behalf they appeared, the evidence on both sides, referring to documents by their dates, and to affidavits by the days on which they were filed, and to witnesses by their names, and then states the order of the Court. The Court has the same power to permit clerical mistakes, or accidental errors in the decretal order, to be rectified, as exists in England, under the twenty-third Consolidated Order.

If either party wish to enrol the decretal order he may do so after the lapse of twelve months from its date, as of course; within that period an enrolment of a decretal order is not allowed without the permission of the Court, which is obtained by motion on notice to all the parties. Any party has a right to lodge with the Lord Chancellor's Secretary a *caveat* against the enrolment of the decretal order, and to give notice to the opposite party that he has done so. The *caveat* being lodged, the enrolment of the decretal order is stayed for twenty-eight days after the service of the *caveat*, and if the decretal order be enrolled during this period, the enrolment will be vacated. The Court has the same jurisdiction to vacate the enrolment of a decretal order if it appears to have been procured by any kind of irregularity, or under circumstances involving bad faith or surprise, as the Court of Chancery in England exercises under similar circumstances. In general, decretal orders of the Court of Chancery in Ireland are not enrolled unless for the purpose of an appeal to the House of Lords, or with the object of filing a Bill of Review and Reversal, or preventing a re-hearing of the cause, or for the purpose of preserving them in some very special cases, as records of title.

of the Decretal Order.

Caveat against enrolment.

Vacating enrolment.

II. The Procedure in a General Cause Petition after the Primary Decretal Order until the Final Order.

Having now traced the progress of a suit, by General Cause petition, to the hearing of the cause, and the pronouncing of the decretal order, it remains to give an outline of the proceedings most usually taken, with a view of giving effect to the decretal order.

References to the Masters.

In some cases the decretal order may put an end to the suit, as where the petition is dismissed, or a simple declaration of the rights of the parties is all that is sought by the petition; but it more frequently happens that in order to enable the Court to do complete justice between the parties, an account or inquiry respecting some matter in question in the suit must be directed, in which case a reference is made to one of the Masters in Chancery, in order that the Court may be satisfied on these matters, before the rights of the parties to the suit are finally determined.

It is of course impossible, in a concise statement like the present, to state all, or any thing approaching to all, the proceedings taken on a reference to the Master, under a decretal order directing accounts or inquiries. Such proceedings must necessarily more or less vary in their detail according to the nature of the suit, the particular inquiries directed, and the acts and conduct of the parties. All that can be done in this sketch of the practice of the Court is to present an outline of the most usual steps adopted in general cause petitions of an ordinary character, and in which there is no deviation from the regular course of the suit.

Proceedings before the Master on a reference under a Decretal Order.

After the decretal order has been pronounced, the Solicitor, having the carriage of the decretal order, lodges a copy of it with the Master to whom the reference is made, and takes out a summons (which is served upon all the parties who have appeared in the suit), to take the Master's directions on the subject of the decretal order. The summons being served, at the time appointed for the meeting before the Master, the parties attend by their Solicitor and Counsel, and the nature of the reference being discussed, the Master gives directions as to the manner in which the reference shall be conducted, whether by

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charge or discharge, or in what other way, and at the same time gives directions in reference to the taking of any incidental proceedings which he may deem necessary, such as the publication of advertisements for persons who are entitled to the benefit of the decretal order, but who are not parties to the suit.

Charges and discharges.

Proceedings in the Master's office under decretal orders, are in form usually brought forward by charge and discharge. The charge is generally filed by the party seeking the account, and a discharge to it filed by the accounting party. The Master, when giving directions as to the manner of proceeding under the decretal order, fixes the time for filing both the charge and discharge. The length of time allowed for this purpose will of course vary with the nature and complexity of the matters in question; but if no time be fixed, the party whose duty it is to file the discharge, is allowed three weeks from the date of the service of the notice of the filing of the charge, to do so.

Mode of verifying charges and discharges.

Charges and discharges are regarded as pleadings, and should be verified by the oath or affirmation of the party, "according to the best of his knowledge or belief," unless the Master, under special circumstances, thinks proper to dispense with the necessity of this, or to permit them to be verified by some other person, such as the Solicitor of any of the parties.

Proceeding if no charge filed.

If the party whose duty it is to file a charge neglect to do so within the time appointed by the Master for that purpose, and the time for doing so has not been extended or enlarged, any party entitled to file a discharge may issue a summons to take the Master's directions as to what further proceedings should be taken, and the Master may, upon the hearing of this summons, either direct some other party to file a charge, or enter in his book, and afterwards state in his report, that the party whose duty it was to file a charge, not having done so, he is unable to report further as regards that party. If, on the other hand, the party whose duty it is to file a discharge, neglect to do so within the time limited for the purpose, and the time for doing so has not been enlarged, the party filing the charge may issue a summons to take the charge as proved, and unless the Master allows further time for filing the discharge, he declares the charge as proved, and afterwards reports accordingly. The filing of either charge or discharge may be enforced by attachment, but except in cases where a discovery is sought this course is never adopted.

Proceeding if no discharge filed.

Mode of proving claims by third parties.

The cases in which claims are made by several persons, such as creditors, legatees, &c., and the practice as to proving or opposing such claims, will be discussed when the practice in Summary Cause Petitions, under the 15th section of the Chancery Regulation Act is considered.

Mode of taking evidence before the Masters on a reference in a General Cause Petition.

The charge and discharge being filed, either party may issue a summons to proceed upon charge and discharge, and upon the summons coming on for hearing before the Master, if there be no matter which involves the necessity of entering into evidence, the Master decides upon the questions raised by the charge and discharge, and enters his decision in his entry book, but if there be questions in controversy which involve the necessity of further proof on either side, the Master gives directions as to the matters upon which proofs shall be given, and the mode of proof, whether by affidavit, oral examination, or personal interrogatories, and fixes the time within which affidavits or personal interrogatories shall be filed, and the examination closed. The Masters possess the same power of taking evidence, *viva voce*, before themselves, as the Lord Chancellor or Master of the Rolls do upon the hearing of a plenary suit; but the practice varies as to the time and mode of taking such evidence, some of the Masters receiving it, *viva voce*, before themselves, upon the hearing of the cause, whilst others direct it to be taken *before* the hearing by the Examiner of the Court.

After the time fixed for taking evidence, other than oral evidence at the hearing, has passed, no affidavits are permitted to be filed, or interrogatories to be administered, except by the special order of the Master, which is never granted unless the Master is satisfied that the party applying for such permission has not become acquainted with the evidence of the opposite side.

Interrogatories for the examination of witnesses are now seldom resorted to, and have been entirely superseded by the practice of examining witnesses, *viva voce*, in chief, or cross-examining those who have made affidavits in the suit; but the Masters still possess the power of directing the evidence to be taken in any of the above modes which they may think proper.

When all the evidence has been taken, with the exception of that directed to be adduced *viva voce* before the Master himself upon the hearing, either party may issue a summons for a hearing before the Master, upon charge, and discharge, and proofs. The case is then set down for hearing before the Master, in what is called his Long Cause List, and appears in its order for hearing before the Master.

When the case is called on for hearing, it is discussed before the Master upon the evidence already taken, and such oral evidence as he may have directed to be adduced before him at the hearing; and the Master, if satisfied with the evidence before him, makes his rulings upon the various matters referred for his decision; or if the evidence does not furnish sufficient materials to enable him to do so, adjourns the case for the production of further evidence, and directs the points upon which further evidence shall be adduced, and the mode in which it shall be taken.

When the evidence is complete, and all the inquiries concluded, and the Master has made his rulings on the various questions referred to him, he gives directions for the preparation of a draft report. This is prepared by the party having the carriage of the proceedings, from the various charges, discharges, and affidavits, in the cause, and the Master's rulings upon them; when prepared, it is lodged in the office of the Master for his approval, and a summons is then issued to settle the report, which, in cases where conflicting rights are to be reported upon, must be preceded by a notice, calling upon the parties interested to show cause why such a summons should not issue. The report usually sets forth the result of the accounts in the body of it, referring to schedules annexed to it for the details. The evidence upon which the Master grounds his report, as well as the evidence which has been rejected, are stated in separate schedules to the report; and if the nature of the reference involves the necessity of reporting upon debts or incumbrances, these are all stated in another schedule.

On the summons to settle the draft report coming on for hearing, the Master decides on all questions at issue between the parties which have not been already decided by him, and settles his draft report accordingly, which he then signs as being approved by him; and the draft report as so settled, remains four days in his office for the in-

spection of all the parties concerned, after which period, if no objections to it be lodged in the mean time, the draft is engrossed, and the engrossment initialed by the Master's Clerk as a compared and correct copy of the draft, as settled by the Master. The engrossment is then signed and passed by the Master, and filed in the Registrar's office, and after eight days it stands confirmed under the General Orders of the Court.

If objections are taken to the report they must be lodged in the Master's office within four days after the draft report has been settled by the Master, except in some special cases of fatality, in which, upon a special application at the Rolls, the Court may relieve a party from the effect of the General Order. The objections are then argued before the Master, who either allows them in whole or part, and alters his report in conformity with them, or overrules the objections altogether, and signs and passes his report, leaving the party who objects to the report to file Exceptions to it.

As a general rule exceptions must be filed before the report stands confirmed, although in some *rare* cases the Court *has* permitted them to be filed after that time. Exceptions can only be taken upon questions which have previously been raised before the Master by objections, and in practice the exceptions are substantially copies of the objections. The exceptions must be certified by Counsel as proper and necessary. The exceptions, when prepared, are stamped in the office of the Clerk of Appearances and Writs, and filed in the Registrar's office, and a sum of £10 deposited at the same time by the party taking the exceptions.

If the report be not objected to, the cause is set down before that branch of the Court which has directed the reference for hearing upon what is called report and merits, that is, for further directions upon the Master's report, or if exceptions to the Master's report have been filed, the cause is set down for hearing on report, exceptions, and merits, that is, for a decision on the exceptions, and for further directions; and in both cases it is heard before either the Lord Chancellor or the Master of the Rolls, according as either of them has directed the reference. If the exceptions are overruled, the report stands confirmed from the day on which it would have been confirmed if the exceptions had not been taken.

The Court, upon the hearing upon further directions, if dissatisfied with the Master's report, may direct him to review it. If, however, the Court considers that the Master's report, either in itself, or as modified by the decision of the Court on the exceptions, supplies the materials which will enable the Court finally to decide upon the questions at issue, it pronounces its decretal order, and thus finally adjudicates upon the rights of the parties to the suit.

III. The Procedure in Particular Kinds of Suits (including Proceedings under the 15th Section of the Chancery Regulation Act).

Under this head may be mentioned:—

(1). Suits under the 15th section of the Chancery Regulation Act.
(2). Cause Petitions stating a special case.
(3). Partition suits.
(4). Suits to perpetuate testimony.
(5). Possessory suits.

(1). *Suits under the 15th Section of the Chancery Regulation Act.*

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Suits may be instituted under the 15th section of the Chancery Regulation Act, 1850, in relation to the following branches of equitable jurisdiction:

(*a*). The administration of the real and personal estates, or the personal estate only of a deceased person.

(*b*). The foreclosure and redemption of mortgages.

(*c*). The appointment of new trustees under a deed or any other instrument.

(*d*). The appointment of guardians, and the allowance of maintenance to infants.

(*e*). The taking of partnership accounts.

(*f*). The payment of judgment debts and debts by recognizance, by the sale of lands or otherwise.

(*g*). The payment of arrears of annuities, tithe or other rent-charges.

(*h*). The payment of any charge or incumbrance on land, whether by sale, or out of annual rents and profits.

In all these cases, the Lord Chancellor is empowered, by the section of the statute above referred to, to make an order referring the matter of the petition to the consideration of the Master, who is then authorized, with certain exceptions, to make such orders, and give such directions, in relation to the relief sought by the petition, as the case may require.

Exceptions from the Master's jurisdiction under this section.

The exceptions from the plenary jurisdiction of the Masters, in cases under the 15th section, are chiefly these, viz., no amendment can be made in the petition, nor can any petition of revivor or supplement be filed, or interrogatories annexed to the Cause Petition by their authority; and the Masters cannot order the actual service of any summons or notice on a Respondent out of the jurisdiction; in all these cases applications must be made at the Rolls; but in all other matters the Master to whom the petition is referred, exercises the same authority that the Lord Chancellor or the Master of the Rolls possesses in a General Cause Petition.

Power of the Masters to make orders.

By the 26th section of the Chancery Regulation Act, the Masters are empowered, from time to time, to make orders for regulating the forms and mode of proceeding in suits under that Act pending before them, with the view of preserving a uniformity of practice, and these orders, unless disallowed by the Lord Chancellor within a limited time, are of the same validity as the General Orders of the Court. Under these provisions, orders have, from time to time, been made for regulating the practice of the Masters in all proceedings, under the 15th sec.; but, as a natural result, from the decisions of the Masters not being reported, a considerable diversity of practice exists between the different offices, even in some of the most ordinary proceedings in a Cause Petition under this section; and upon some of the most material steps in a cause instituted under this section, a practice common to all the Masters can be hardly said to exist.

Form of a Cause Petition under the 15th section of the Chancery Regulation Act.

In every petition for a summary order, under the 15th sec., the title is the same as in General Cause Petitions, with this exception, that the words *sec.* 15 are usually placed immediately after the words "Cause Petition under the Court of Chancery (Ireland) Regulation Act." Every such petition should state whether there is any other proceeding pending by Bill or otherwise, for the like purposes; but the Court may in its dis-

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cretion make a summary order, notwithstanding the pendency of such proceeding. If the petition be one for the administration of real or personal estate, or be presented by a legatee, devisee, or creditor, it should state that a personal demand for the payment or account sought by it had been made at least three weeks before presenting of the petition, with the reply, if any, to such demand. In all other respects the petition should be framed as a General Cause Petition, and is verified and filed in the same manner.

Mode of setting down Cause Petition under the 15th section for a first hearing.

After the petition has been filed, a copy of it is lodged in the Registrar's office, with a docket stating the title of the petition, and the day on which it was filed. The Lord Chancellor hears petitions for summary orders under the 15th sec., on every Saturday during the terms and after-sittings. In order that a Cause Petition may appear in the list on that day, a copy of the petition and a docket containing the title of the suit must have been lodged with the Registrar on or before the preceding Thursday.

The first hearing of 15th section petition

The hearing is generally ex parte; but in some cases in which the Lord Chancellor entertains a doubt as to whether it is proper to make a summary order of reference under this Section, he directs notice to be served upon some or all of the respondents and adjourns the hearing of the case to a future day. When the case is called on for hearing, the subject-matter of the petition is very briefly stated by the petitioner's counsel (who is generally a member of the Outer Bar), and if the Court thinks that the petition is within the 15th Section of the Chancery Regulation Act, and that it otherwise states a proper case, entitling the party to a reference under the Act, a summary order is made, the curial part of which is generally in the following form: "His Lordship doth order that it be referred to Master—to consider the matter of the said petition, and proceed thereon pursuant to the statute; and it is further ordered that the costs of the proceedings in this matter up to and including the hearing, do abide the result of the usual costs in the Master's Office." By the 13 & 14 Vic., c. 89, sec. 15, the Lord Chancellor may add to this summary order any special direction he thinks fit; but this power is seldom exercised.

Effect of the Lord Chancellor's order of reference.

Although the summary order is generally made ex parte, it is considered to be an adjudication by the Lord Chancellor that the case falls within the 15th Section of the Chancery Regulation Act. The order of the Lord Chancellor therefore precludes the Master to whom the petition is referred from entering into the question whether the Court exceeded its power under the Act in making the order; and the Master will proceed to act upon the order of reference, unless it be discharged by the Lord Chancellor on motion. It is also held to be for some purposes in the nature of a decretal order: as, for instance, in a suit for the administration of personal assets, after the above order has been made, a creditor will be restrained from suing the executor in respect of a debt due by his testator. The Master may, however, ultimately dismiss the petition for want of equity or on any other ground not involving the propriety of the order of reference.

Mode of proceeding after order of reference in 15th section petitions.

When the Solicitor of the petitioner brings the summary order into the office, he at the same time lodges with the Master's Examiner a correct copy of the petition, which is then marked with the date of its lodgment; and the petitioner's Solicitor at the same time takes out a summons to proceed upon such order, returnable as a general rule in three weeks, or on the Master's first sitting day for cases of this description.

This summons must be served on each of the Respondents a fortnight at least before the day for hearing, together with two notices, which state the relief sought by, and the date of filing the Petition; and that the petitioner's claim will be proved or taken as admitted, on the day on which the summons is returnable, unless in the mean time the Respondents file a discharge to the Cause Petition; that they are served with the notice and summons in order that they may attend the proceedings and be bound thereby; and that they must enter an appearance four days at least before the summons is returnable if they wish to be served with notice of further proceedings, otherwise the Master will proceed in their absence without further notice.

Service of the summons and notices above mentioned is effected in the same manner as service of the notice of filing a General Cause Petition, and the Masters have the same power to direct a substitution of service, or to deem a substituted service already effected good, as the Master of the Rolls possesses in the case of a General Cause Petition; but they have no power to direct service to be effected out of the jurisdiction of the Court.

An appearance is entered for the Respondent in the same manner as in General Cause Petitions, and this must be done in all proceedings under this section to enable a party to be heard before the Master. The summons is entered in the Master's Long Cause List for the day on which it is returnable, and appears in its order in the list of business for some particular day.

On the day upon which the case appears in the printed Cause List it is called on in its turn, and the Solicitor for the Petitioner, having produced attested copies of all appearances entered in the cause, and of affidavits of service on parties who have not appeared, the hearing is proceeded with. If the Respondent does not attend, or if he attends and does not ask for time to file a discharge, then, according to the practice before some of the Masters, the Petitioner gives evidence in proof of his title to the relief sought by the Petition, and the Master makes his rulings, and directs the proper Decretal Order to be prepared; but generally the second hearing of a Cause Petition under the 15th section of the Chancery Regulation Act, is for the purpose of taking the Master's directions as to pleadings and parties; and the case having been opened by the Petitioner's Counsel, the Petition is ordered to stand as a charge; or if the special circumstances of the case require it, the Petitioner is directed to file a charge either in chief or as supplemental to the Petition standing as a charge; and the Respondent is ordered to file his discharge within a limited time, generally three weeks from the time when he receives notice of the filing of the charge.

If the Master is of opinion that other persons than the Respondents should be bound by the proceedings, he directs the service of a notice to that effect upon such parties as he considers necessary; and the Master may, upon the application of a third person not a party to the suit, but who is interested in the matter, give him liberty to intervene and attend the various proceedings in the suit.

At this hearing, also, the Master usually limits the time within which the final order is to be obtained, but he has power, from time to time, to extend the time if necessary, and in the

majority of cases the time is frequently extended. If the final order is not made up within the time limited by the order on the first hearing, or some extension of it, the cause stands dismissed.

The proceedings above described are those which most usually take place on the *second* hearing of a Cause Petition under the 15th section of the Chancery Regulation Act.

When the discharge has been filed a summons is issued to proceed upon charge and discharge, which is served upon all the parties who have appeared in the suit; and at this, the *third* hearing of a Petition under the 15th section, the Master, if necessary, directs in what manner the evidence shall be taken, whether by affidavit, *viva voce* examination before the Master, or upon interrogatories; and fixes a time within which proofs in the above manner upon both sides shall be made.

When the evidence has been taken in conformity with the Master's directions, a summons is issued for a *fourth* hearing of the cause upon pleadings and proofs; and on its appearing in the Master's List, it is discussed before him by Counsel on both sides. If the pleadings and evidence before the Master be sufficient to enable him to dispose of the several questions of law and fact arising in the cause, the Master gives his decision, and enters in his book his rulings upon the different matters at issue between the parties. If the case be not ripe for his decision, the Master gives directions either as to the filing of a supplemental pleading or the adducing of further proofs, according to the circumstances of each case; and the case is from time to time re-entered for further hearing until the different questions at issue in the suit have been finally decided. The decision of the Master on each of these various hearings is taken down at the time in the form of rulings, which are in the nature of minutes of his decree, and may be afterwards embodied in a formal decretal order. The distinction between orders and rulings is chiefly important with reference to the right of appeal.

When all the questions, whether of law or fact, have been disposed of, the Master directs the Solicitor having the carriage of the proceedings to prepare a draft *final* decretal order, and within a limited time, generally one week, to lodge the draft of this order when prepared in his office. The draft *final* order is prepared from the various orders and rulings made from time to time in the progress of the suit.

On the day the draft order is lodged, or the day after, a summons to settle it is issued and served on the Respondents, and on all persons who have been made parties by notice, and all Creditors and other persons who have filed charges or claims, so as to give all parties interested in the subject matter of the suit an opportunity of seeing that their rights are protected, and that the decretal order is conformable to the various rulings of the Master in the suit. The decretal order of the Master is then settled in the presence of all parties, and a fair copy, signed by the Master, is transmitted to the Registrar's Office, where it is filed and enrolled in the same manner as the decretal order of the Lord Chancellor and Master of the Rolls in general cause petitions.

A decretal order of the Master, made under this section, does not require confirmation, and it possesses all the force and effect of a decretal order by the Lord Chancellor or the Master of the Rolls in a general cause petition matter.

Such is the general course of practice in the Master's Office in all proceedings or suits of an ordinary character, under the 15th section of the Chancery Regulation Act; but, of course, the variety of the cases which arise under the different branches of equitable jurisdiction mentioned in this section, gives rise to an infinite variety in the character of the proceedings; and it would be impossible, without extending the present statement to an undue length, to trace, with accuracy, all the deviations from the general course of practice which the peculiar circumstances of particular cases may occasion. There are, however, two classes of cases which involve certain peculiarities of practice, and which have hitherto constituted so important a portion of the jurisdiction of the Masters as exercised under this section, that it is right to notice them specially. These are—

(*a*) Suits for the administration of personal estate, and

(*b*) Suits for foreclosure and sale.

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(*a*). In a Creditor's suit, or a suit by a legatee, or one of the next of kin of an intestate, for the administration of the personal assets of a deceased person, in which cases the personal representative is usually the sole Respondent in the first instance, the Court, on application of the Respondent, may, even after the order of reference has been made, stay the suit upon terms. In such suits it is not usual for the respondent to file a discharge in the first instance—that is, previous to the *second* hearing of the cause—unless the existence of the debt is disputed; in which case he is at liberty to file a discharge before the order to account is made. The practice of the Masters differs as to the effect of the personal representative not adopting this course: some of the Masters holding, that by not doing so he admits the existence of the Petitioner's demand; while others, treating the *second* hearing as one for obtaining the Master's directions, hold that he is bound, though no discharge be filed, to establish his status, as a Creditor or Legatee, or the like, before the order to account is made. According to the practice of all the Masters, on the Petitioner's claim being established at the *second* hearing, either by confession or by proof, the usual account is ordered to be taken of the funeral expenses and debts of the deceased person, and of his assets; and the Solicitor having the carriage of the proceedings is directed to publish the usual advertisements in the public papers, requiring all Creditors and Legatees to furnish the Executor or Administrator, or his Solicitor, with the particulars of their demands against the estate within a certain limited time; and the Master at the same time directs the Executor or Administrator, within a certain period after the time for furnishing claims has expired, to file a general charge, including therein all claims against the estate. On the claims being furnished to the personal representative under this order, he is bound to serve the claimant with a notice stating whether he admits or disputes the demand, either in the whole or in part, and whether he intends to include the claim in his general charge. The personal representative then files a general charge in the office, including therein every claim, debt, and demand, stating which he disputes and which he allows. A summons is then taken out upon the charge of the personal representative, and any discharge which may have been filed to it; and the rulings of the Master are obtained upon the different questions which arise, including the claims furnished to the personal representative. If the demand of any Claimant is disallowed, in the whole or in part, the personal representative is bound, within a week, to give notice of such disallowance to the Claimant, who may, within a fort-

Administration suits.

Posting for creditors and legatees.

Mode of determining the rights of persons who come in under posting.

Third party, whose claim is disallowed

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may file a charge.

night after the receipt of such notice, file a charge setting forth such claim. When all such charges have been filed, a general discharge is filed by the personal representative, setting out the different claims in a tabular form, numbered consecutively, with the special reasons for contesting or requiring proof of each claim; and a summons having been issued, the Master hears the different charges and the discharges discussed, and makes a ruling upon each claim, directing such of them as are not ripe for adjudication to stand for some future day for further proof or consideration.

Within the time limited by the Master's order the personal representative files an account of the personal estate of the Testator at the time of his death, the part received by the personal representative, and how it has been applied; and the personal representative then proceeds to vouch the account in the usual way before the Master's Examiner. When the demands on the assets and the amount of the assets have been ascertained, the Master directs the Solicitor having the carriage of the proceedings to prepare a final order, embodying all the rulings of the Master, and this order is settled, and afterwards entered in the office of the Registrar of the Court in the usual manner.

Suits for foreclosure and sale.

(*b*). The procedure in foreclosure suits in the Irish Court of Chancery differs both in principle and detail from that which prevails in the Court of Chancery in England. It has always been the practice in Ireland in foreclosure suits to decree not merely a foreclosure, but a sale of the mortgaged property or a competent portion of it; and accordingly all persons who would be necessary parties to a suit for a sale are also necessary parties to a suit for foreclosure; but, as has been before remarked, incumbrancers who have not gone into possession are not necessary parties in the first instance. It results from the scope and structure of a foreclosure suit in Ireland that the rights of all persons whose claims affect the title to the estate must be bound by the decree; and, accordingly, the first order made by the Master is usually an order to take an account of the sums due on foot of the Petitioner's incumbrance and *all other* incumbrances affecting the lands; advertisements are directed to be published, requiring all incumbrancers to come in and file their claims on or before a certain day, in order that the same may be proved; the petition is ordered to stand as a charge, with liberty to the Respondent to file a discharge within a limited time, generally three weeks; and the Respondent is directed to file a discharge to all claims.

If the Respondent files a discharge to the Petition a summons is issued to proceed before the Master on charge and discharge; and the Master then adjudicates upon the matter at issue, or if necessary he gives his directions as to proofs, and upon a *third* summons he adjudicates upon the matters at issue upon the pleadings and proofs. At the expiration of the time appointed for filing claims, the Respondent prepares a general discharge, which is in a tabular form, as in administration suits, and one general summons is issued to proceed upon all these claims, and the Respondent's general discharge; and the Master finally disposes of all undisputed claims in the first instance, and the disputed claims are then proceeded with and adjudicated upon. The ruling of the Master upon each claim is entered in a column at the end of the original discharge, and opposite to each claim.

Prior Mortgagee.

A prior Mortgagee who proves under the Master's order may insist upon having his mortgage redeemed, or that the petition be dismissed against him. This dismissal does not operate as a foreclosure, but prevents the parties to the suit from proceeding to a sale, while it preserves to the prior Mortgagee all his former remedies.

After the petition and claims are disposed of the Master directs the Solicitor of the Petitioner to prepare a final decretal order, embodying his several rulings; and a summons to settle this order must be served on the Petitioner and each Incumbrancer.

The order shortly recites the several proceedings in the suit, and the curial part is in the usual form of a decretal order in suits for foreclosure and sale, or for payment of the demand of any other specific incumbrancer.

It is not necessary to state the subsequent steps in the Master's office in proceeding to a sale under a decretal order. Since the passing of the Act creating the Landed Estates Court, it has been the almost invariable practice to carry out an order for sale under the powers of that Court; and although no general order has been promulgated on the subject, a growing reluctance has been exhibited by the Lord Chancellor, to make orders under the 15th section of the Chancery Regulation Act in suits by specific incumbrancers for the sale of lands.

(2). *Cause Petitions stating a Special Case.*

The course of procedure in this class of cases cannot be more concisely stated than in the words of the 11th section of the Chancery Regulation Act, 1850, by which the jurisdiction in this class of cases is created. By that section it is enacted, "That any person (the direction of the Master in the case of persons under disability being first obtained) may present a petition to the Court stating any documents, facts, or circumstances, relating to any matter falling within the jurisdiction of the Court by way of special case, and praying for the opinion of the Court upon such special case; and the Court may give judgment upon such petition accordingly, and such judgment shall bind all such persons as the Court may direct; and in default of such direction, then shall bind such persons as presented the same, and shall have the same effect as a declaration made by decree in a suit to which such persons were parties would have had, and shall be subject to rehearing and appeal in the same manner as in the case of other petitions under the Act: and where the opinion of the Court is desired in any matter in which any infant, idiot, lunatic, or married woman, is interested, the Masters of the Court in rotation may direct the presenting of such petition by way of special case on behalf of the infant, idiot, lunatic, or married woman, and such direction of the Master shall be conclusive to all intents and purposes."

The petition stating a special case is in form similar to a General Cause Petition.

The section of the Irish statute differs from the English statute principally in the provisions made for binding the rights of persons under disability. In other respects the practice, allowing for the difference between the English Bill and the Irish Cause Petition, is substantially the same.

(3). *Partition Suits.*

The proceedings in partition suits, allowing for the difference between the Cause Petition and Bill, are the same as in England previous to the introduction of the new practice on this subject. The Decretal Order directs a Commission to issue

to certain persons named by the parties to the suit, directing them to divide the land into lots, according to the interests of the different parties. The Commissioners accordingly make the allotment and return the Commission, and the Court then directs mutual conveyances to be executed by the different parties. This terminates the suit. Partitions are, however, at present more frequently effected under the jurisdiction of the Landed Estates Court than by suit in Chancery

(4). *Suits to Perpetuate Testimony.*

Suits to perpetuate testimony are brought where a person is presumptively entitled to land or some interest therein (the title to which is in dispute), and is desirous to preserve the testimony of the witnesses upon whose evidence his title depends, in order that it may be available on a future occasion. In such case, if the Petitioner is apprehensive that the evidence may be lost by the death or mental incompetence of the witnesses, he may present a Cause Petition in the nature of a *quia timet* Bill for the purpose of perpetuating their testimony.

Suits of this class are of such rare occurrence in Ireland that it is difficult to state with any certainty the practice which would now be adopted in relation to them under the present system of procedure in Chancery by Cause Petition, which is quite at variance with that contemplated by the 13 Geo. II., c. 9 (Irish), under which the practice in suits by Bill in such cases is regulated. The General Orders of the Court under the Chancery Regulation Act afford no assistance in removing this difficulty; but it would seem that upon the Cause Petition being filed, showing a sufficient case to entitle the party to maintain the suit, a Commission to examine the witnesses named in the petition would be issued on the application of the Petitioner, and under this Commission the evidence of the witnesses would be taken in the same manner as under the former practice. These suits are never brought to a hearing, nor can they be dismissed under the General Orders of the Court for want of prosecution; but if the Petitioner neglect to proceed, the Respondent may, on motion, compel him to do so, or to pay the costs of the suit.

The original jurisdiction of the Court has been considerably extended by the Act 5 and 6 Vict., c. 69, but the system of procedure has not been altered by that Act.

As regards costs, the practice seems to be that a Respondent who merely cross-examines the witnesses of the Petitioner is entitled to be paid his costs; but if the Respondent takes the benefit of the suit by examining witnesses on his own behalf he must pay his own costs.

(5). *Possessory Suits.*

Amongst the class of Cause Petitions in which a Special Course of Procedure exists, should be noticed Possessory suits. They are so styled because the right of *property* to the subject in dispute cannot be litigated in them, but only the right to *possession*; and, as a general rule, an exclusive possession of the subject matter of the suit by the Petitioner for three years before the disturbance complained of must be established.

The suits of this class most frequently resorted to are (*a*) Injunction Suits, to restrain legal waste where no account is sought; (*b*) Suits to be restored to possession after being forcibly evicted; (*c*) Suits to be quieted in the enjoyment of land, or some easement relating to it; (*d*) Suits to recover possession from overholding tenants.

Possessory suits, though not altogether unknown in England, are, it is believed, in a great measure peculiar to Ireland, where Cause Petitions of the class first above mentioned, namely, Cause Petitions for an injunction, in the nature of writs of estrepement, are frequently resorted to, as affording a cheap and summary remedy for restraining legal waste. Possessory suits of the other classes have in a great measure become obsolete.

Course of proceeding in Possessory suits.

Possessory suits are never in practice brought to a plenary hearing. The usual course of practice in these suits is as follows:—After the petition, which in form is similar to any other general Cause Petition, has been filed, an affidavit is made by some person acquainted with the facts of the case, who verifies all the material statements in the petition. The petition is then moved *ex parte* at the Rolls, and an order for an injunction granted until answer and further order. If cause be not shown, the order is made absolute, as of course, and operates as a perpetual decree in the cause in favour of the Petitioner but without costs. If cause be shown, affidavits are filed on behalf of the Respondent, and notice served in the usual way to dissolve the injunction; and the motion being heard, the injunction is either continued or dissolved, according to circumstances; and this, as a general rule, except in cases in which an appeal is brought, terminates the proceedings in the suit.

The general order before referred to, under which all Cause Petitions which are not set down for hearing in two terms after the term when they might have been set down, stand dismissed, does not apply to Possessory suits.

IV. Interlocutory and other Summary Applications in Suits.

Interlocutory applications are of various kinds, and may be made by any party to a suit, and in many cases, by persons not parties. The procedure, in these cases, is either by—(1) Motion; (2) Petition; (3) Summons.

Motions.

Motions may be made either before the Lord Chancellor, the Master of the Rolls, or the Master in the matter, according to the nature of the suit, and the stage of the proceedings at which the step is taken. Motions are either of course or upon notice, and the order made upon them either absolute or conditional. When a matter is pressing, or the object of the application would be defeated by its being prematurely disclosed to the parties affected, either no notice is given, or short notice is given, and the motion moved at the sitting of the Court, If the party affected by the notice has not entered an appearance, notice is usually served for the sitting of the Court on some particular day, and the fact of such service is verified by affidavit.

Time of service of notice.

The notice should state the exact object of the application, and if it be intended to ask for costs, it is usual to mention it in the notice. In general there must be two clear days between the service of the notice, and the day on which it is moved; but in a proper case the Court often gives liberty to serve notice for an earlier day; and in such case, the notice should state that such permission has been granted.

Affidavits in support of notice must be filed before service.

All affidavits upon which the motion is grounded, should be filed before the notice is served, and referred to in the notice by their dates; but, in some cases, supplementary affidavits, or affidavits in reply to those filed by

the opposite party, are permitted to be used, though filed after the service of the notice.

Mode of service of notice.

Services of all notices, summonses, and orders, are effected through an office of the Court called the Notice Office, which is, in fact, a department of the Appearance and Writ Office. All notices intended for parties who have appeared in any cause or matter must be served through the Notice Office; and all notices intended for service must be lodged in the Notice Office before one o'clock on the day upon which they are intended to be served, with an endorsement of the different services required to be effected, and with as many copies of the notices as are required to be served. The notices are served on the day upon which they are lodged, upon the persons mentioned in the endorsement. This service is effected by one of the Notice Clerks, whose duty it is, on the following day at furthest, to endorse upon the notice the fact of service, and to make an entry of the title of the cause or matter, with the names of the parties upon whom the service has been effected, in one of the several books kept for that purpose. The notices, when returned to the office, are arranged in the order in which they have been delivered for service, and the motions appear in that order in the list for hearing. Upon the day upon which the case appears in the list for hearing, the notices are sent into Court, each notice being endorsed with the names of the parties who have been served, and the names of their respective solicitors; and the motions having been called as they appear in the list, the order of the Court is endorsed upon the notice, which is then transmitted to the Registrar's Office, where the order is formally drawn up.

Notice office.

Motions in General Cause Petitions.

Motions in General Cause Petitions should be moved before the Master of the Rolls, except in some few cases, *e.g.*:—where the order, if made on the motion, would interfere with or alter a decree or order of the Lord Chancellor, or where the case stands for hearing before the Lord Chancellor, at the time the motion is heard, and in some special cases particularly excepted by the General Orders of the Court. In matters under the 15th section of the Chancery Regulation Act, all motions, unless in the excepted cases which have been previously noticed, must be made to the Master to whom the case is referred. The cases in which the proceeding by motion on notice, as distinguished from summons, should be adopted, are regulated by the General Orders of the Masters, 1851, Nos. 11 and 12. Any party dissatisfied with the order made on a motion, may renew the motion by way of appeal, or move that it be discharged. Appeals from orders of the Lord Chancellor or Master of the Rolls on motions, are heard before the Court of Appeal. Appeals from the orders of the Masters in cases arising under the 15th section, are heard before the Master of the Rolls, whose decision may afterwards be reviewed by the Court of Appeal.

Motions in 15th section. Petition matters.

Petitions.

(2) Petitions are never presented in Ireland in relation to matters arising in plenary suits, except in cases of a pressing nature, and when the Court of Chancery is not sitting. In such cases they are frequently presented during the vacation, for the purpose of obtaining an order from the Lord Chancellor in Chamber, without waiting for the regular sittings of the Court. Petitions are always addressed to the Lord Chancellor, and in the cases above referred to, are heard by the Lord Chancellor himself, or the Holder of the Great Seal for the time.

Summons.

(3) The procedure by summons is exclusively applicable to proceedings in the Masters' Offices. Summonses may be issued either in proceedings on a General Cause Petition under an order of reference to the Master, or in proceedings under the 15th section of the Chancery Regulation Act (1850) Ireland. Instances of some of the cases in which a summons may be issued will be found in that part of the foregoing statement which relates to proceedings in the Masters' Offices.

The cases in which the procedure should be by summons, as distinguished from motion on notice in Cause Petitions under the 15th section of the Chancery Regulation Act, are fixed by the 11th and 12th General Orders of the Masters, 1851.

Summonses are of two classes, and are entered either in the Short Cause List or Long Cause List, according to the nature and length of the case, and the time which will, in all probability, be occupied in its discussion. Summonses are served in the same manner as notices, and two clear days must elapse between the day of service and the day mentioned in the summons for attendance, except in certain special cases, in which the Master may make the summons returnable either at a longer or shorter period, according to circumstances.

V.—Revivor and Supplement.

The practice of the Court of Chancery in Ireland in cases of the transmission by death, marriage, or otherwise, of the interest of any party to any proceeding, whether by Bill, Information, or Cause Petition, is regulated by the 13th and 14th Vic., c. 8, sec. 29, which enacts that it shall be lawful for any person interested to bring before the Court the person to whom such interest has been transmitted, either by Supplemental Bill, Information or Petition, or by a suggestion at the foot of the original Bill, Information, or Petition, and by notice to such person; and service of such notice being made, the person so served shall, from the time of such service, become a party to such proceeding, and be bound in all respects in the same manner as if an order for revivor or a supplemental decree had been made, as the case may require, without the necessity for any order of revivor or supplemental decree being made by the Court. Provided always, that if the person served be under disability, the matter shall be specially brought before the Court by affidavit, and the Court shall thereupon make such order as may be just.

There are then two modes of remedying the defect in a suit occasioned by the transmission of interest of a party, viz.:—by (1) Bill, Information, or Petition of Revivor or Supplement; or (2) by suggestion and notice.

(1) A suggestion, as will be seen hereafter, can only be entered by a party to the suit. In all cases, therefore, where the person desirous to remedy the defect in the suit occasioned by the transmission of the interest of the deceased, is not a party to the suit, the usual proceeding is by filing a Cause Petition of revivor, or revivor and supplement, as the case may be. Thus, in order to revive a Cause Petition matter which has abated before decree by the death of a sole petitioner, when his interest has been transmitted to his personal representative, the suit is revived by a simple petition of revivor. The party seeking to revive the suit should apply at the Rolls by *motion of course* for liberty to file a Cause Petition of revivor. The order is in the first instance a conditional order, and is usually in the following form:

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Form of Order.

Let A, the executor of B, deceased, the Petitioner in this matter, be at liberty to file a Petition of Revivor; and let the said A, when the said Petition of Revivor shall be filed, be at liberty to serve notices on [naming the parties to the suit], to show cause within eight days after the service of such notice why the proceedings should not stand revived; and let the said A be at liberty, after the expiration of the said eight days, and upon a certificate of no cause shown, to enter a Side-Bar Order to revive, according to the form settled by the Court.

If the application is for liberty to file a Petition of Revivor in a case in which the original Cause Petition has been referred to the Master under the 15th section of the Act, the order directs the matter of the Petition of Revivor to be referred to the same Master.

After the Petition of Revivor has been filed, the Petitioner should cause notice of it to be served on the persons named in the order, and upon production of an affidavit of service, and on a certificate of no cause shown, a Side-Bar Rule is entered that the matter do stand revived.

If the Respondent shows cause against the matter being revived, he must do so by affidavit; and the cause must, it is believed, be set down and heard in the usual way, either before the Lord Chancellor or the Master of the Rolls, in the case a General Cause Petition; or in case of a Petition under the 15th section of the Chancery Regulation Act, before the Master to whom the case stands referred; but there is not any instance in practice of any such proceeding having occurred.

If the petition is one of supplement or revivor and supplement, a special application, on notice, must be made at the Rolls for liberty to file it; after which the cause is set down and heard in the usual way, before the same branch of the Court as that to which the original petition stands referred.

(2) The class of cases in which a suit by Cause Petition may be revived by suggestion, closely resembles those in which a suit in England may be revived by an order of Revivor. As a general rule, this mode of proceeding can only be adopted by a party to the suit, for example—upon the death of one of two co-petitioners, and the transmission of his interest in the suit to a third party, the *latter* can only revive the proceedings by a petition of revivor, or revivor and supplement, to be filed after obtaining the leave of the Court; and the subsequent proceedings are similar to those above pointed out; but if the surviving *Petitioner* is desirous to revive the proceedings, he may enter a suggestion at foot of the original Cause Petition, stating shortly the transmission of the interest, and serve notice of it upon the persons against whom the proceedings should be revived. And so, if the interest of a Respondent in the subject matter of the suit is transmitted to a third party, as his real or personal representative, the proceedings may be revived, by the *Petitioner* entering a suggestion, and serving notice of it in the manner above stated, but this course cannot be adopted by the party to whom the interest of the Respondent has been transmitted.

Notice of the suggestion should be served on all parties and persons against whom the proceedings are sought to be revived. No order for liberty to revive is necessary, unless some of the persons to be served are under disability, in which case the matter should be brought specially before the Court by affidavit, and a special order to revive obtained.

Service of notice of the suggestion is effected in the same way as service of notice of a Cause Petition; and service will be directed to be substituted when *substitution* of service of the notice of the original Cause Petition has been directed; but the proceeding by suggestion cannot be resorted to when any of the persons upon whom notice is to be served reside out of the jurisdiction, and service cannot be substituted, the Act not empowering the Court to direct service of the notice of a suggestion out of the jurisdiction. In such a case, the proper mode of reviving the proceedings is by Cause Petition of Revivor or Revivor and Supplement, as before mentioned.

It may be added, that although Revivor by suggestion and notice, at the instance of a party to the Cause Petition matter, appears, according to the terms of the Act of Parliament, to be applicable to all cases where there is a transmission of interest; yet, practically, it is only adopted in cases where a simple Bill of Revivor would, under the old practice, have been sufficient; in all other cases the usual practice is to proceed by Petition of Revivor.

VI.—The Mode of enforcing Decretal and other Orders.

Fieri facias; Registered judgment; Mortgages.

Decretal Orders of the Court of Chancery may be enforced under 3 & 4 Vic. c. 105, by *fieri facias*, or charging order, or they may, under the provisions of the 13th & 14th Vic. c. 29, be converted into a specific charge upon the lands of the party affected by them, by means of the course of procedure pointed out by that Statute. They may also be enforced, under the original jurisdiction of the Court by—(1) Sequestration, (2) Attachment, or (3) Where delivery of the possession of lands is directed, by Injunction to the Sheriff. If any of these processes is intended to be resorted to, an attested copy of the Decretal Order must be served upon the party, with an endorsement stating that in default of obedience to the order he will become liable to the process of attachment or sequestration. As a general rule, personal service of the order must be effected; but, in certain exceptional cases, the Court has permitted service to be substituted.

Sequestration.

(1) Sequestration is a process by which the party in default is deprived of the use and enjoyment of all his property within the jurisdiction of the Court, until the order of the Court is obeyed or satisfied. It consists of a writ directed to certain persons (nominees of the Petitioner), commanding them to enter the lands and seize the goods of the party in default. Sequestration may be either on mesne or final process. Sequestration on mesne process, is resorted to as a means of enforcing obedience to an order of the Court, *e.g.*, to answer interrogatories, to put in accounts, or deliver up deeds; in which case the money realized by the sequestration is brought into Court, and is retained until the party has cleared his contempt. A sequestration of this class may issue during the sittings of the Court without any order. In vacation it can only issue upon an order. Sequestration on final process is generally issued to enforce a decretal or other order, and the money realized will be applied in satisfaction of the demand of the party. In order to entitle a party to obtain a writ of sequestration, it is no longer necessary to issue an attachment to the Serjeant-at-Arms and to procure a return of *non est inventus*.

Statement of Mr. Jellett as to Ireland.

Examination *pro interesse suo*.

Attachment.

If the goods of a third party are seized, a reference to examine the parties *pro interesse suo* will be granted; and the practice on this proceeding is the same as in England.

(2) Attachment is a writ directed to the Sheriff of the county in which the Respondent is supposed to be found, requiring him to take the Respondent and have him in the Court of Chancery on a day named in the writ. The writ is sealed in the Registrar's Office, and the Sheriff executes it in the same manner as any other writ against the person.

Injunction to deliver possession of lands.

(3) If the Respondent is required to deliver up possession of lands, a writ of injunction is issued to the Sheriff of the county to put the Petitioner into possession; and this writ is executed in the same manner as a writ of *habere facias possessionem* is at Common Law.

VII.—Rehearings and Appeals.

A party who considers himself aggrieved by any decretal or other order of the Court, may either apply to rehear the cause or appeal from the order. It is chiefly with reference to this subject that it is important to consider whether a decretal order has been enrolled. The proceeding to correct a decretal order unenrolled is by appeal, or rehearing before the Court of Appeal in Chancery, and no appeal lies to the House of Lords from such an order before enrolment. After enrolment an appeal lies to the House of Lords, or a bill of review and reversal may be filed.

Constitution of the Court of Appeal.

The Court of Appeal in Chancery in Ireland is constituted under the 19th and 20th Vic., chap. 92, intituled the Chancery Appeal Court (Ireland) Act, 1856, and consists of the Lord Chancellor of Ireland for the time being, and the Lord Justice of Appeal in Chancery in Ireland, a judicial officer created by the Act; and in any particular appeal or rehearing, the Court may have the assistance of any Judge of the Courts of Common Law in Ireland, who, at the request of the Chancellor, may attend; and such Common Law Judge, as to the matter heard before the Court, is deemed a Judge of the Court of Appeal.

In practice the assistance of a Common Law Judge is seldom required, except in cases of rehearings or appeals from an order of the Lord Chancellor himself, and even in that case it is not obligatory.

All decisions, decretal, interlocutory, or summary orders of the Master of the Rolls in any suit, and all orders made by the Lord Chancellor in the exercise of any jurisdiction, power, or authority, duly vested in or to be exercised by him under any Act of Parliament, or by usage, are subject to appeal to the Court of Appeal; and all rehearings of decisions, decretal or other orders of the Lord Chancellor, are heard and determined by the Court of Appeal. The phraseology of the Act seems to create some doubt whether the right of the Master of the Rolls to rehear a cause heard before himself is taken away. In practice, however, such a proceeding is unknown; and the effect of the Statute being, at all events, to deprive the Lord Chancellor, sitting in the Court of Chancery, of the right to rehear a cause, the distinction between rehearings and appeals is, practically, of little importance.

Time within which appeals and rehearings may be brought.

Appeals and rehearings to the Court of Appeal may be brought without leave of the Court of Chancery at any time within three months from the time when the decision or order complained of was made; but after that time no appeal or rehearing can be brought, unless with the special leave of the Court of Chancery. This leave is obtained by a special motion to the Lord Chancellor, supported by the necessary affidavit; and notice should be served on all parties to the suit. The affidavit should show that substantial grounds probably exist for such appeal or rehearing, and should satisfactorily account for the delay in bringing forward the appeal.

Petition of appeal.

All appeals and rehearings are brought before the Court of Appeal by Petition, which must be signed by Counsel, and should state concisely the grounds on which the order complained of is sought to be set aside or varied. The Petition must be printed, and three printed copies should be lodged with the Registrar, and a printed copy served on each of the Respondents to the Appeal.

Within ten days after such service, or such extended time as the Court may allow, such of the Respondents as seek to maintain the order should put in a case by way of answer to the Petition of Appeal, which should be drawn and signed by the counsel for the respondent, and should state concisely the grounds and reasons upon which he relies in support of the order appealed against.

Course of hearing appeal.

In every rehearing before the Court of Appeal, and in every appeal where the entire order is objected to, the Petitioner in the original Cause Petition is entitled to begin; but in appeals from an order of the Master of the Rolls, dismissing, or affirming, or altering an order of the Master, made under the jurisdiction conferred on him by the 15th section of the 13 & 14 Vic., c. 89, and in every *partial* appeal from a decree or order made by the Lord Chancellor or the Master of the Rolls, the Appellant is entitled to begin.

The Court of Appeal has power to affirm, reverse, or alter the decree or order of the Court below, and with or without costs; but, as a general rule, the costs follow the event of the Appeal.

Appeals from orders of the Masters in Cause Petitions.

There are some peculiarities in the practice of appeals from and rehearings of an order made by any of the Masters of the Court in proceedings under the 15th section of the 13 & 14 Vic., c. 89, which it is right to notice. A decretal order of the Master, made in a Petition referred to him under the 15th section of the Chancery Regulation Act, may be reheard before *himself*; and this seems to be the only instance of such a proceeding being in practice allowed in a suit in the Court of Chancery of Ireland; but leave to rehear the order will not be granted, unless the Master is of opinion that there probably exists substantial grounds for such rehearing, and any delay which has occurred in making the application for liberty to rehear should be satisfactorily accounted for.

The application for liberty to rehear should be by a motion to the Master, on notice to the other parties to the Cause Petition; and an affidavit should be made stating facts to satisfy the Master on the above matters.

An appeal lies to the Master of the Rolls from every order, direction, or other proceeding of the Master made in a Cause Petition under the Chancery Regulation Act; and such appeal may be made during the period of fourteen days from the day on which the order is filed in the Registrar's office, exclusive of vacation, or within such other period as the Master shall by his order allow; but no appeal lies from any ruling of the Master where the order has not been formally made up. The order of the Master of the Rolls made on such appeal may be reviewed by the Court of Appeal in Chancery in the same manner as any other order made by him.

Statement of Mr. Jellett as to Ireland.

VIII.—Summary Statutory Jurisdiction, and Summary Jurisdiction in Minor Matters.

A large portion of the jurisdiction of the Court of Chancery, is either *created* by Statute, or is *exercised* in a summary manner under the provisions of some particular Statute, which enables the proceeding to be commenced and prosecuted in a less formal manner than by Bill or Cause Petition. A list of the most important of these Statutes will be found at the foot of this statement. The jurisdiction of the Court in these cases is exercised either on petition or motion. It does not fall within the purpose of this sketch to distinguish in detail the cases in which these different modes of proceeding must be resorted to; but it may be laid down as a general rule, that when the Court has once acquired jurisdiction by the presenting of a petition in the first instance, all subsequent proceedings in the same matter may be taken by motion, except in cases in which it is otherwise directed by particular Statutes, or in petition matters relating to infants, in which every step must be taken by petition.

Petitions are, in all cases, presented to the Lord Chancellor, and should be intituled in the matter of the Act, and also in the matter of the particular estate, deed, or person to which they relate, and presented by some person authorized by the Statute or otherwise to make the application. The course of proceedings in summary petitions is generally as follows:—After the petition has been prepared, it is stamped in the office of the Clerk of Appearances and Writs, and an affidavit verifying the petition *in extenso* is then made by some person acquainted with the facts. An attested copy of this affidavit and the petition are then lodged with the Secretary of the Lord Chancellor; after which, if the prayer of the petition is one which may be granted as of course, his lordship fiats the petition, which is then transmitted to the Registrar's Office and filed, and an order is then made out in the terms of the prayer.

If the prayer of the petition be of a special nature, and one which the Lord Chancellor cannot grant as of course, his lordship makes what is called an order of hearing on the petition; and the petition is then handed back to the Solicitor, in order that the necessary service may be effected.

Service of the petition is effected through the Notice Office by means of a notice intituled in the matter or matters in which it is given. The notice should state the prayer of the petition, and the various documents and affidavits upon which the motion is grounded, it should ask for all the relief the Petitioner requires, it should be signed by the Petitioner's Solicitor, and addressed to the party himself, or his Solicitor. The names of all the parties served, and the character in which they have been served, and the names of the Solicitors, and the persons whom they represent, must be endorsed on the back of the notice, as in other cases, and the notice must be served two clear days before the hearing.

Summary petitions are heard at the Rolls on every Wednesday during the sittings of the Rolls Court, and are listed in the same manner as general motions, and moved according to their order. When a Respondent is served with a notice to show cause against the prayer of a petition, he must file an affidavit, and serve notice showing cause, otherwise the Registrar will give a certificate of no cause. When the petition has been heard, a minute of the order of the Court is taken down by the Registrar, and the petition is then transmitted to the Registrar's Office, and the order is drawn up and signed by the Registrar, and the petition filed in his office.

Minor matters.

The jurisdiction of the Court of Chancery in relation to the person and property of infants, has long been exercised in a summary way. The course usually adopted for the purpose of placing an infant and his property under the protection of the Court, is by presenting a summary petition intituled in the matter of the minor, praying for the appointment of a guardian, and the approval of an allowance out of the minor's property for his maintenance; and a reference is then made to one of the Masters on these subjects. Orders in minor matters can only be obtained on petition.

Practice for executors to account in minor matters.

There is one peculiarity in the practice in minor matters which it is right to notice. It has long been the practice in Ireland for executors to account in minor matters; and although they cannot be compelled to adopt this course, yet if they do so, and undertake to bring in the balance on their account, the Court will oblige them to fulfil their undertaking, and will prevent as well the Minor as any creditor who may have availed himself of such undertaking, from afterwards questioning the propriety of the account.

(Signed,) Hewitt P. Jellett.

List of some of the most important Statutes conferring a Summary Jurisdiction on the Court of Chancery in Ireland.

Charitable Trusts Act (Sir S. Romilly's Act), 52 Geo. III., c. 101.
Legacy Duty Act (54 Geo. III., c. 92).
Property Belonging Beneficially to Infants and Feme Coverts (1 Wm. IV., c. 65).
Ecclesiastical Leasehold Acts (3 and 4 Wm. IV., c. 37; 6 and 7 Wm. IV., c. 99).
Tithe Rent-charge Act (1 and 2 Vic., c. 109, s. 30).
Custody of Infants Act (2 and 3 Vic., c. 105).
Pigot's Act (3 and 4 Vic., c. 105, ss. 23 and 24).
Land Clauses Act (8 and 9 Vic., c. 18).
Trustee Relief Act (11 and 12 Vic., c. 68).
Attorneys and Solicitors Act (12 and 13 Vic., c. 53).
Leasehold Conversion Act (12 and 13 Vic., c. 105).
Judgment Act (12 and 13 Vic., c. 95; and 13 and 14 Vic., c. 29).
Trustee Acts (13 and 14 Vic., c. 60.; and 15 and 16 Vic., c. 55).
Leases and Sales of Settled Estates (19 and 20 Vic., c. 120; 21 and 22 Vic., c. 77).
Lord St. Leonard's Act (22 and 23 Vic., c. 35, s. 30).

EQUITY.

Summary of Differences, England and Ireland.

II.—4. SUMMARY of PRINCIPAL DIFFERENCES in the PRACTICE and PROCEDURE of the COURTS of EQUITY of ENGLAND and IRELAND, annexed to preceding STATEMENTS.

Messrs. Barber and Jellett.

(I.) THE PROCEDURE IN A SUIT (IN ENGLAND), AND GENERAL CAUSE PETITION SUIT (IN IRELAND), DOWN TO THE DECREE OR PRIMARY DECRETAL ORDER.

Form of bill and cause petition.

In *England*, an ordinary suit is commenced by filing a bill, the form of which is explained in Mr. Barber's separate statement. The draft is signed by counsel. The bill is printed.

The plaintiff's solicitor selects the branch of the Court before which the suit is to be heard, and intitules the bill accordingly. The Lord Chancellor, however, is empowered to transfer any cause set down for hearing from the paper of any of the Vice-Chancellors to that of any other of the Vice-Chancellors, and the Lord Chancellor and Master of the Rolls have power to transfer causes to or from the paper of any of the Vice-Chancellors from or to that of the Master of the Rolls. The bill is not verified.

In *Ireland*, an ordinary or as it is called plenary suit is commenced by filing a cause petition, the form and nature of which are stated in Mr. Jellett's separate statement. The cause petition is signed by the solicitor as well as by counsel, and is engrossed and addressed to the Lord Chancellor, who afterwards arranges whether the cause shall be heard before him or the Master of the Rolls.

The cause petition is verified by affidavit in the manner pointed out in Mr. Jellett's separate statement.

Parties.

In *England*, as against persons from whom no account or other direct relief is sought, the bill may pray that upon their being served with a copy thereof, they may be bound by the proceedings in the cause. If upon being so served they appear and defend, they do so at their own risk as regards costs. If they do not appear, the Court may, in their absence, make a decree binding their rights.

In *Ireland*, persons against whom no account or other direct relief is sought are not necessary parties to the suit in the first instance; there is, therefore, no practice corresponding to that which exists in England upon this subject.

As to making Trustees parties.

In *England*, under the 9th rule of the 42nd section of the 15 & 16 Vict., c. 86, in all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, the trustees represent their cestuisque trust in the same manner as executors or administrators in suits relating to personal estate represent the persons beneficially interested.

In *Ireland*, by the 24, 25, & 26 G. O., 1843, in all suits concerning real estate which is by conveyance or devise vested in trustees who are competent to sell, or in cases where the trustees have an immediate power of sale which it is their duty to exercise, and whether they are or are not competent to give discharges for the proceeds of the sale, they in like manner represent the persons interested in the estate or proceeds, and where such trustees are competent to give discharges for the rents, they also represent the persons beneficially entitled to the rents. The above General Order, as will be seen, does not apply to trustees of personal estate.

In *England*, service is effected by delivering a printed copy of the bill in the mode mentioned in Mr. Barber's statement (p. 58), indorsed with a requisition to appear. It may in general be effected out of the jurisdiction, the leave of the Court having been previously obtained for the purpose.

In *Ireland*, service is effected by delivering a copy of the notice of filing the cause petition in the form stated in Mr. Jellett's statement (p. 76); and service out of the jurisdiction can only be effected in the particular class of suits mentioned in 2 W. 4, c. 33, and 4 & 5 W. 4, c. 82—as to which see Mr. Jellett's separate statement. The leave of the Court for this purpose must be obtained.

In *England*, if a defendant fail to enter an appearance, the plaintiff may enter an appearance for him, and subsequently, if the defendant do not intervene (which he is entitled to do only without prejudice to intermediate proceedings), the plaintiff may proceed in due course to take the bill *pro confesso*. The effect of entering an appearance for a defendant is mentioned more in detail in Mr. Barber's statement, p. 58.

In *Ireland*, no appearance is entered by the petitioner for the respondent. If the respondent does not appear he is not entitled to notice of the further proceedings in the suit, unless the Court make a special order for the purpose; but in general cause petitions the defendant may, although he has not entered an appearance, file affidavits in answer or proof, and appear at the hearing and defend his rights. In petitions under the 15th section of the Chancery Regulation Act no proceedings can be taken by a respondent until he has first appeared.

In *England*, the proceedings by a plaintiff to appoint a guardian to appear and answer for a defendant under disability are taken before the Court.

In *Ireland*, the proceedings are taken before the Master in the matter, as detailed in Mr. Jellett's statement.

In *England*, demurrers and pleas are resorted to as separate modes of defence.

In *Ireland*, demurrers and pleas are practically unknown, and all defences, whether in law or fact, are raised by the answering affidavit of the respondent.

In *England*, any defendant may be compelled to answer the bill upon interrogatories filed as of right, and that course is commonly resorted to.

In *Ireland*, interrogatories can only be filed by special leave of the Court, and in practice are seldom resorted to.

In *England*, a defendant may put in a voluntary answer, and frequently does so.

In *Ireland*, no formal answer is put in. Its place is supplied by an answering affidavit, which is in the nature of a voluntary answer.

In *England*, production of documents by the defendant is obtained in the mode explained at p. 59 of Mr. Barber's statement, by summons grounded on admissions in the answer or in an affidavit, which the defendant may be required to make as of course. If the plaintiff suspects the defendant has documents which he has not admitted, his course is to amend the bill, and interrogate anew. The affidavit, if technically sufficient, cannot be objected to. The defendant may compel the plaintiff to produce documents in the same manner, but not until the defendant has fully answered. There is no power for a defendant to compel a co-defendant to produce documents previously to the hearing, and no power to compel a person not a party to produce documents for inspection.

In *Ireland*, production of documents by petitioner or respondent is enforced by motion, on notice stating the documents the production of which is required. This may be grounded on admissions in the cause petition or affidavit in answer. No affidavit as to documents will be ordered, unless the party applying shows some ground for believing that the documents are in the possession of the opposite party. Any *party* may compel any other *party*, and also a person not a party, if he would properly be a respondent in the suit according to the old practice, to produce documents for inspection; and after such an order is made, the party against whom it is made becomes a party to the suit. If the Court considers the affidavit as to documents evasive, it may order interrogatories to be administered for the examination of the party.

In *England*, a defendant, and in *Ireland*, a respondent, may file cross interrogatories for the examination of the plaintiff and petitioner respectively, prefixing a concise statement of the points on which discovery is sought; but in *Ireland* an order of the Court must be obtained on special motion before such interrogatories can be filed.

In *England* an answer is filed in the Record and Writ Office, and is strictly a pleading. It does not, at the commencement or in the body of it, appear to be made upon oath. The oath actually administered on swearing it is of a qualified kind, *i.e.*, the person answering swears that what is contained in the answer, so far as concerns his own acts and deeds, is true to his own knowledge, and so far as relates to the acts and deeds of other persons, is believed by him to be true.

In *Ireland*, an affidavit by the respondent by way of answer is filed in the Rolls Office. In this respect it differs from other affidavits, which are filed in the Chancery Affidavit Office; but although any defence may be made by the answering affidavit, it is not, strictly speaking, a pleading at all. The oath administered on swearing it is similar to that adopted in verifying any other affidavits.

In *England*, if no answer is filed, the defendant is considered as traversing the case made by the Bill.

In *Ireland*, every allegation made in the cause petition, and not controverted by the affidavit in answer, is taken as admitted, and every allegation of a material fact made by or on behalf of the respondent in support of the defence, is taken as confessed by the petitioner, unless denied by affidavit made by or on behalf of the petitioner.

If no answering affidavit is filed, the petitioner's case, so far as it depends upon facts, is taken as admitted; but the respondent may demur *ore tenus* at the hearing for want of equity, or other sufficient reason.

In *England*, the plaintiff has full liberty of amendment before answer; after answer he may amend once as of course, and subsequently may obtain an order for that purpose, complying with the conditions referred to in Mr. Barber's statement, p. 60. The amendments are made by written alterations in the bill as originally printed, or by additions on interleaved paper, or where the rule of the Court (as to which see Mr. Barber's statement, p. 60) so requires, by a reprint of the whole bill as amended. New facts occurring subsequently to the filing of the bill may properly be introduced by amendment.

Amendment of bill.

In *Ireland*, the petitioner has no power to amend his cause petition as of course. No amendments in a petition can be made without a special order of the Court, to be obtained by motion on notice and affidavit stating and verifying the amendments. The amendments are made without any interlineation or alteration in the engrossment of the orginal petition, by a statement added to the engrossment on the file, in the manner described in Mr. Jellett's statement. Facts occurring after the filing of the cause petition, and before issue joined, may be introduced by amendment, and as no formal issue is ever joined in cause petitions before the hearing, the petitioner would seem to be entitled to introduce, by way of amendment, a statement of any facts which have occurred before the hearing of the cause. As leave to amend must, however, be obtained in all cases, the foregoing right, if it exists, would be subject to the control of the Court.

Amendment of petition.

In *England*, there are practically three modes of closing the pleadings,—

Closing the pleadings.

(1.) By setting down the cause for hearing upon bill and answer.
(2.) By giving notice of motion for a decree.
(3.) By replication.

The nature of these different modes of proceeding, and the cases in which they are resorted to, are explained in Mr. Barber's statement (pp. 61, 62).

In *Ireland*, there is no mode in general cause petitions of closing the pleadings. No formal issue is ever joined before the hearing; and the same mode is adopted in all general cause petitions of bringing it to a hearing, as described in Mr. Jellett's statement.

In *England*, the evidence is taken in three different modes, applicable to the different modes in which the pleadings are closed.

Mode of taking evidence.

1. Where the cause is set down on bill and answer. There is no evidence except the answer and formal proof of documents not denied by the answer.

2. Where notice of motion for decree is given. The plaintiff files such affidavits as he may think fit, before the notice is served, and mentions at the foot of such notice the affidavits he intends to read, and he may read the answer, or such parts of it, as he thinks fit without notice, as against the defendant whose answer it is.

The defendants must file affidavits in answer within a fortnight, or such further extended time as the Court may think fit to allow, and give notice to the plaintiff of the affidavits he intends to read.

The plaintiff may file affidavits in reply, but the

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affidavits must be strictly in reply, and no further evidence is allowed on either side without special leave of the Court, which is very rarely granted; and as a rule upon payment of costs any of the witnesses on either side may be cross-examined on their affidavits before the Examiner.

3. Where a replication is filed the evidence may be taken in all or any of the three following modes:—

(*a.*) By affidavit filed at any time before the period fixed for closing the evidence.

(*b.*) By examination before the Examiner *ex parte* without cross-examination.

(*c.*) As to particular issues of fact, by evidence taken *vivâ voce* at the hearing under a special order.

(*d.*) If the parties so agree, by examination, cross-examination, and re-examination before the Examiner, not *ex parte*, but in the presence of solicitors and counsel on both sides. Either party is entitled as of right to require any person who has made an affidavit to attend for cross-examination in Court at the hearing.

In *Ireland*, the same mode of taking evidence is applicable in all suits by general cause petition. Evidence is in the first instance taken by affidavit. There is no time before the hearing conclusively fixed for taking evidence in this manner, nor are the pleadings ever formally closed. Each party exhausts his case as on a motion by alternate affidavits, subject to this qualification, that after the respondent's affidavits in rejoinder have been filed, no further affidavits can be filed without leave of the Court, which in practice is seldom refused, and the costs of the application for this purpose are generally made costs in the cause. There is no direct power enabling either the Court or the parties to compel a witness who has made an affidavit to attend for cross-examination in Court at the hearing. Either party may, however, require the production of a witness for cross-examination before the Examiner of the Court. The Court may direct the evidence of any witness to be taken *vivâ voce* at the hearing, or before one of the Examiners of the Court, but this course is in practice generally confined to cases in which evidence by affidavit cannot be procured.

Admissions.

In *England*, under the Chancery Amendment Act, 1858, sect. 7, in suits where all parties are competent to make admissions, any party may call on any other party to admit documents, saving all just exceptions; and in case of refusal or neglect to admit, the costs of proving the documents are payable by the parties so neglecting or refusing whatever the result of the cause may be, unless the Court certifies that the refusal to admit was reasonable; and no costs of proving any document are allowed, unless such notice is given, except in cases where the omission to give the notice is in the opinion of the Taxing Master a saving of expense. It is doubtful whether this provision applies to all cases, or only to such as are heard before the Court and a jury under the provisions of the Act, and the question has not as yet received a judicial decision.

In *Ireland*, a provision to somewhat the same effect, but confined to documents to be proved as exhibits in the cause, is contained in the 164th G. O., 1843. It, however, applies to all hearings, whether before the Court or Master, but the Taxing Master has no such discretion as is contained in the provision of the Act above referred to.

The provision above referred to of the Act of 1858 has not been treated as introducing any new practice in cause petitions, and has not been acted on in Ireland.

In *England*, a bill can only be dismissed upon the application of the defendant on motion, which may be made whenever the plaintiff has omitted to take a step in the suit for longer than some period fixed by the General Orders of the Court. The principal cases in which this may be done are mentioned in Mr. Barber's statement (p. 63).

In *Ireland*, in the event of a general cause petition not being set down for hearing within the time prescribed by the General Orders of the Court for that purpose, which in general cause petitions is two whole terms after the expiration of four weeks from the service on the respondent last served, the petition stands finally dismissed, under the General Orders of the Court, unless either a caveat has been entered or the Court on special motion reinstate the petition. The practice on this point will be found in Mr. Jellett's statement (page 80). In cases arising under the 15th section, the Master is bound on the first hearing before him to fix the time within which the final order in the suit must be made up, and in the event of this not being complied with (except in cases in which an extension of time is allowed for this purpose by a special order of the Master) the petition stands dismissed with costs.

(II.) Proceedings subsequent to Decree or Primary Decretal Order and down to the Final Order.

The proceedings under this head are so entirely different that no summary can usefully be given. The English practice will be found at pp. 64, 65 of Mr. Barber's statement, the Irish practice at pp. 79–81 of Mr. Jellett's statement.

(III.) Special Practice and Procedure in particular Kinds of Suits and Proceedings.

In *England*, there are certain cases in which a decree may be summarily obtained upon summons duly served without a bill being filed. The cases to which this practice applies are mentioned in Mr. Barber's statement (pp. 66, 67).

In *Ireland*, there is no mode of obtaining a decretal order without filing a cause petition. There are certain cases in which a mode of proceeding may be resorted to, which, though different from that adopted in general cause petitions, can hardly be called summary. Petitions of this class are presented under the 15th section of the Chancery Regulation Act, and the cases in which this mode of procedure may be adopted, and the course of practice applicable to them, will be found in detail at p. 81 *et seq.* of Mr. Jellett's statement.

In *England*, proceedings relating to the guardianship and maintenance of infants, in cases in which they are not taken in an existing suit, are commenced by summons at chambers (see pp. 66, 67 Mr. Barber's statement), from which the matter may be adjourned into Court in case any question of difficulty arises. There is no practice similar to that which exists in Ireland of executors accounting voluntarily in matters of guardianship and maintenance.

In *Ireland*, proceedings in minor matters (*i.e.* matters relating to guardianship and maintenance of infants), in cases in which they are not taken in an existing suit are in practice commenced by presenting a summary petition to the Lord Chancellor, intituled in the matter of the infant, praying for the appointment of a guardian, and the approval of an allowance. And the Lord Chancellor in

chambers makes an order of reference to the Master. All proceedings in minor matters, except on references before the Master, must be taken by petition, and not by motion. In other respects the practice in these cases is the same as in petitions presented under the summary statutory jurisdiction of the Court. It is a common practice for executors to account in minor matters on their undertaking to bring in such sum as may be found due by them, and upon this undertaking they can be compelled to bring in the money by a simple proceeding in the matter. Petitions for the appointment of a guardian and for maintenance may be made by cause petition under the 15th section of the Chancery Regulation Act, but the practice has been disapproved of by the Courts, and has in consequence ceased to be adopted.

In *England*, the course of proceeding is under 13 & 14 Vict. c. 35, and is explained in Mr. Barber's statement, p. 67. The rights of persons under disability are bound by the special course of procedure pointed out by sections 3 to 6, and the Court must be satisfied by affidavit or other sufficient evidence that the statements so far as they affect these parties are true.

In *Ireland*, the course of proceeding is under 13 & 14 Vict. c. 89, s. 11. The rights of parties under disability are bound by the order of the Master, whose direction upon this subject may be taken in a summary way, and it rests in his discretion whether he require an affidavit or not in support of the allegations contained in the special case.

In *England*, in foreclosure suits, and suits by specific incumbrancers, all persons interested in the mortgaged property, whose estates are *puisne* to those of the plaintiff, including judgment creditors and other specific incumbrancers, are necessary parties to the suit. If the plaintiff make a prior incumbrancer a party, he may redeem him, or in default the bill is dismissed with costs as against the prior incumbrancer. This dismissal operates as a foreclosure of the plaintiff, and prevents his filing a subsequent bill to redeem. The ordinary decree directs a foreclosure and not a sale, but under the circumstances specially mentioned in Mr. Barber's statement (pp. 67, 68) the Court may, and frequently does (either in exercise of the statutory jurisdiction conferred by the 15 & 16 Vict. c. 86, s. 48, or under its general practice) order a sale instead of a foreclosure.

In *Ireland*, the only persons who are necessary parties are the owner of the mortgaged property, and such incumbrancers as are in possession or in receipt of the rents of the mortgaged property otherwise than by a receiver or sequestrator appointed by the Court. All other incumbrancers must come in under the decretal order, or they will be deprived of the benefit of it. In foreclosure suits the decretal order in all cases directs a sale as well as a foreclosure, and an account of all incumbrances affecting the premises. If a prior incumbrancer comes in under the decretal order, and proves his demand, he may insist upon being redeemed, or that the suit be dismissed as against him.

(IV.) Interlocutory and other Summary Applications and Suits.

In *England*, notices by and on solicitors are proved by affidavit. The party serving a notice of motion is not bound to file the affidavits upon which the motion is intended to be grounded until after the service, but no affidavit filed before the date of the notice of motion can be used on the hearing of the motion unless notice is given either in the notice of motion or otherwise. The hearing of motions is according to the precedence of counsel, subject to the rule that no counsel can move more than two opposed motions in succession.

In *Ireland*, all notices are served through the Notice Office, and the service proved by indorsement on the notice. The practice in this office will be found in Mr. Jellett's statement (p. 86). All original affidavits to be used in support of a motion must be filed before the notice is served and specified by their dates of filing in such notice. The order of hearing motions is according to a list made out on the previous day from information derived from the offices of the Court and according to the time of delivering of the notice to the Notice Clerk for service.

Messrs. Barber and Jellett.

Service of notices.

In *England*, all affidavits, whether to be used as evidence on the hearing in ordinary suits, or interlocutory proceedings, must be expressed in the first person.

Affidavits.

In *Ireland*, affidavits may be expressed either in the first or third person.

In *England*, petitions are very generally used for the purpose of obtaining the direction of the Court respecting matters and questions arising in suits already in existence.

Petitions.

In *Ireland*, petitions are never used in plenary suits, except in cases of a pressing nature arising during the vacation in which they are presented for the purpose of obtaining an order from the Lord Chancellor, and without waiting for the sitting of the Rolls Court. In plenary suits, the matters which in such cases in England are done by petition, *e.g.*, the allocation and payment of money under a decree, are in Ireland effected by motion on notice.

In *England*, summonses are heard before the Judge or his Chief Clerk in Chambers.

Summonses.

In *Ireland*, all summonses are before the Master.

(V.) Revivor and Supplement.

Revivor and supplement.

In *England*, where a suit abates or becomes defective by the death, marriage, or transmission of the interest of a party, it may be revived or made perfect by an order of revivor or to carry on the proceedings, which is obtainable on motion or petition as of course. This order is served upon the parties against whom the suit is to be revived, or the proceedings in which are to be carried on, and they enter appearances as if they had been served with the bill. In some cases, the facts which have given rise to the abatement, or to the defect in the proceedings are stated before issue joined by amendment of the bill, and after issue joined by a supplemental statement, which is in the same form as the stating part of the bill, and upon which the defendants may be interrogated, and to which they put in their answers in the usual way.

In *Ireland*, a suit may be revived, (1) by suggestion and notice; (2) by petition of revivor.

(1.) The proceeding by suggestion and notice can only be adopted by a party to the suit, and is, in fact, only applicable in those cases in which an order of revivor may be obtained in England. Service of the suggestion and notice cannot be effected out of the jurisdiction, and the cases in which this course of procedure may be adopted are therefore in practice further limited to those in which actual or substituted service within the jurisdiction can be effected.

(2.) Petitions of revivor must be resorted to

Equity. Summary of Differences, England and Ireland. Messrs. Barber and Jellett.

where the proceedings to revive the suit are taken at the instance of a person not a party to a suit, or where an order to serve out of the jurisdiction is necessary; the course of practice in these cases is stated in Mr. Jellett's statement.

(3.) Petitions of supplement or of revivor and supplement may be filed in the same cases in which a supplemental statement in England is used, and under the present practice, according to which there is no formal issue joined, it would seem that the purposes of a supplemental petition before the primary hearing might be effected by amendment of the original petition. There has, however, been no judicial determination of this question.

(VI.) The Mode of enforcing Decrees and Orders.

Enforcing decrees.

In *England*, decrees and orders of the Court may be enforced by attachment, followed, if necessary, *either* by an order for the Serjeant-at-Arms, and, if that process be ineffectual, by a sequestration, *or* by a sequestration without any intermediate order for the Serjeant-at-Arms; but neither of the two last-named processes can be resorted to unless an attachment has previously issued and has been returned *non est inventus*. Decrees or orders for the payment of money may also be enforced by *elegit* and *fieri facias*, or by *charging order*.

In *Ireland*, there is at present no such officer as the Serjeant-at-Arms, and this process, though not abolished, has in a great measure become obsolete. If this process were now resorted to, a special appointment would, it is believed, be made for the purpose of executing the writ. A sequestration may issue without being preceded by an attachment or Serjeant-at-Arms. The writ of *elegit* cannot issue to enforce a decretal order obtained since the passing of the 13 & 14 Vic., c. 29 (An Act to amend the Law of Judgments in Ireland), but such decretal order may be converted into a specific charge upon the land of the debtor by the course of procedure pointed out in that Act. Decrees or orders directing the payment of money may be enforced by *fieri facias* and charging order as in England.

In *England*, decrees or orders directing the delivery of the possession may, in case of disobedience, be enforced, not only by attachment, but by a writ of assistance. This writ is obtained upon motion of course, supported by an affidavit of due service of the decree or order, and corresponds to a writ of *habere facias possessionem* at common law.

In *Ireland*, the delivery of the possession of lands pursuant to a decretal order is enforced by a writ of injunction to the sheriff of the county in which the lands are situate, which issues as of course upon a direction to that effect inserted in the decretal order.

(VII.) Rehearings and Appeals.

Appeals and rehearings and enrolment.

In *England*, appeals and rehearings are in general brought before the Court upon petition of appeal or rehearing, to which is appended a certificate, signed by two counsel, that they consider the appeal is proper; but an order made on interlocutory motion may be appealed from by motion, and without any certificate of counsel. An appeal may be brought at any time within five years if the decree is not enrolled. A decree may be enrolled within six months from its date, as, of course; after that time the leave of the Court is necessary. No decree can be enrolled after five years, unless the Lord Chancellor or the Lords Justices shall, upon motion and notice to all parties, be of opinion that there are peculiar circumstances rendering it just and expedient to allow enrolment. The further details of this subject are found in Mr. Barber's statement (pp. 72, 73).

In *Ireland*, all appeals and rehearings, whether from decretal orders or orders upon motion made by the Lord Chancellor or Master of the Rolls, are brought by petition of appeal before the Court of Appeal in Ireland. The petition must be signed by counsel, but no certificate of counsel is required. An appeal may be brought within three months from the date of the order by leave of the Court, but after that time can only be brought by special leave of the Court, to be obtained on motion grounded on an affidavit explaining the delay. The effect of enrolment as precluding a rehearing is the same in Ireland as in England, but the practice relating to enrolment differs. There can be no enrolment without the permission of the Court until after the lapse of twelve months from the date of the decree. In proceedings under the 15th section of the Chancery Regulation Act, the Master may himself rehear the cause. An appeal lies from all orders of the Masters to the Master of the Rolls, from whose order an appeal lies to the Court of Appeal. The further details of this subject are found in Mr. Jellett's statement (p. 88).

(VIII.) Summary Statutory Jurisdiction.

In *England*, in general, unless the Act specifies any particular form of proceeding, the application is by petition, and all further proceedings must be continued by petition. Service of the petition is effected by delivering to the solicitor of the party a copy of the petition, and showing him the original, with the Judge's order for hearing thereon. The petition is placed in the paper for hearing without any further application by notice or otherwise.

In *Ireland*, as a general rule, when the petition is once presented all further proceedings may be taken by motion unless the particular Act directs the contrary. Service of the petition is effected by delivering to the party or his solicitor a notice in the terms of the prayer of the petition, stating the day upon which the petition will be moved. The notice is served and the service proved in the same manner as notices of interlocutory motions.

(Signed) C. Chapman Barber.
Hewitt P. Jellett.

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Appendix A.—Papers on Common Law Practice and Procedure.

Common Law.

1. Circular respecting Common Law Practice and Procedure addressed to the Lord Chancellor of Ireland, the Master of the Rolls in Ireland, the Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer in Ireland, and the Judges in Bankruptcy.

Form of Circular.

Form of Circular to Judges as to Practice and Procedure.

Law and Chancery Commission Office,
Four Courts, Dublin,——day of——— 62.

I am directed by Her Majesty's Commissioners for inquiring into the Superior Courts of Common Law and the Courts of Chancery in England and Ireland to forward to you the enclosed Statement on Common Law Practice and Procedure, prepared for the Commissioners by Messrs. Jellett and Holland.

I am, at the same time, to forward to you the questions which the Commissioners have addressed to Irish Barristers, having considerable experience in Common Law Practice and Pleading, and to the Councils of Societies of Attorneys and Solicitors in Ireland.

I am directed by Her Majesty's Commissioners to state that they will be glad to receive, and pay every attention in their power to any observations which it may occur to you to make in reference to the subject of the Statement and Questions.

I have the honour to be,
Your obedient servant,
(Signed), W. Neilson Hancock,
Secretary.

To———

2. Observations on Common Law Practice and Procedure in Reply to above Circular. Right Hon. T. B. Cusack Smith, Master of the Rolls in Ireland.

Observations on Practice and Procedure.

Rt. Hon. T. B. Cusack Smith, Master of the Rolls in Ireland.

Merrion-square, November 1, 1862.

Sir,—I beg to acknowledge the receipt of your letter, in which you state that you have been directed by Her Majesty's Commissioners for inquiring into the Superior Courts of Common Law and the Courts of Chancery in England and Ireland to forward to me a statement on Common Law Practice and Procedure prepared for the Commissioners by Messrs. Jellett and Holland, and that Her Majesty's Commissioners will be glad to receive any observations which it may occur to me to make in reference to the subject of the statement. I have also received the questions which you enclose, which the Commissioners have addressed to Irish Barristers having considerable experience in Common Law Practice and pleading, and to the Councils of Societies of Attorneys and Solicitors in Ireland.

In reply, I have the honour to state, for the information of Her Majesty's Commissioners, that I have read the statement of Messrs. Jellett and Holland and the questions which you have enclosed, and I feel a difficulty in answering those questions, as I was appointed to the office of Master of the Rolls before the passing of the English or Irish Common Law Procedure Acts, and I have therefore no very accurate knowledge of the working of the present system of pleading and practice in the Courts of Common Law in England and Ireland.

Previous to the year 1834, in the three principal kinds of actions, viz., assumpsit, debt on simple contract, and trespass on the case, it was competent both in England and in Ireland for the defendant to raise almost all defences under the old plea of the general issue. There were some exceptions to the rule (for example,

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Observations on Practice and Procedure.

Rt. Hon. T. B. Cusack Smith, Master of the Rolls in Ireland.

the defence of the Statute of Limitations), but the general rule was what I have stated. In the year 1834, general orders were made by the English Common Law Judges, under the authority of an act of parliament, by which the system of special pleas was introduced into England in those forms of action. The system introduced into England in 1834 was not adopted in Ireland, and until the passing of the Irish Common Law Procedure Act, in actions of assumpsit, debt on simple contract, and trespass on the case (which constituted a very large majority indeed, of all the actions which were brought), almost all defences were admissible under the general issue. The system worked well in Ireland, and if special demurrers had been got rid of, and special forms of personal actions had been abolished, so as to prevent objections for misjoinder, and other alterations had been made, so as to prevent the result of cases depending on the skill and dexterity of the pleader, it would have been much more for the benefit of the suitors than the introduction of the complex system established by the Irish Common Law Procedure Act. I stated my opinion on the subject of law pleading, and on other matters connected with law reform, in a pamphlet published in the year 1852, and of which I am the author; and I take the liberty of sending a copy of that pamphlet to you, which, if laid before Her Majesty's Commissioners, will explain my opinion on the subject of law pleading. The Legislature having, however, decided, by passing the English and Irish Common Law Procedure Acts, that it is beneficial to the suitors that the complex system of pleading established by those Acts should be adopted instead of the simple and inexpensive system referred to in the said pamphlet, the question, which I presume, Her Majesty's Commissioners will have to decide is between the English and Irish Common Law Procedure Acts. If that be the question, I entertain an opinion that the system of exceptional legislation for Ireland is objectionable, and that it would be better that the course of pleading and procedure should be assimilated. I do not, of course, mean to suggest that if it can be shown that any part of the English system works badly, that it should be introduced into Ireland for the mere sake of assimilation, but *primâ facie* it would be better that the same system should be adopted in England and in Ireland. Having, as I have already stated, no personal knowledge of the working of the English and Irish Common Law Procedure Acts, having been appointed to the office of Master of the Rolls before those Acts passed, I do not think I can give any answer to the queries sent to me, except by referring to the pamphlet, of which I send a copy. As the pamphlet is, I believe, out of print, I am unable to send more than one copy. The questions sent being confined to the working of the present system of Common Law Pleading and Procedure, I, of course, offer no opinion on the question of equity pleading and procedure, but I may observe, that that subject was also considered in the pamphlet I send.

I remain, Sir,
Your obedient humble servant,
T. B. Cusack Smith.

William Neilson Hancock, Esq.

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3. Circular respecting Common Law Practice and Procedure, addressed to Irish Barristers having considerable experience in Irish Common Law Pleading and Practice, and to the Councils of Societies of Attorneys and Solicitors in Ireland.

Form of Circular to Barristers and Solicitors in Ireland as to Practice and Procedure.

Form of Circular.

Law and Chancery Commission Office,
Four Courts,
Dublin, —— day of ——, 1862.

Sir—I am directed by Her Majesty's Commissioners for inquiring into the Superior Courts of Common Law and the Courts of Chancery in England and Ireland to forward to you the annexed Paper of Questions respecting Common Law Practice and Pleading, and to request that you will favour the Commissioners with answers to the questions therein contained. I am also to request that you will transmit your answers to this office before the day of

I enclose a copy of the Commission, and of Messrs. Jellett and Holland's statement respecting Common Law Practice and Procedure.

I am, Sir, your obedient servant,
(Signed), W. Neilson Hancock,
Secretary.

To——

1. What is the result of your experience, and what is your opinion of the working of the present system of Common Law pleading in Ireland?

2. What are the changes (if any) in the present system of pleading in the Common Law Courts in Ireland which you would suggest?

3. What is the result of your experience, and what is your opinion of the working of the present system of Common Law practice in Ireland?

4. What are the changes (if any) in the present system of practice in the Common Law Courts in Ireland which you would suggest?

5. Are there any provisions of the Irish Common Law Procedure Acts of 1853, 1856, and statutes amending them, now peculiar to Ireland, which might, in your opinion, be advantageously extended to England?

6. Are there any provisions of the English Common Law Procedure Acts of 1852, 1854, and 1860 now peculiar to England, which might, in your opinion, be advantageously extended to Ireland?

7. Are there any other parts of the Law or Practice of the Superior Courts of Common Law peculiar to Ireland which might, in your opinion, be advantageously extended to England?

8. Are there any other parts of the Law or Practice of the Superior Courts of Common Law peculiar to England which might, in your opinion, be advantageously extended to Ireland?

9. Can you specify instances within your knowledge to illustrate the views you take in your answers?

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* In addition to those who answered, the Circular was sent to—F. M'Donogh, Q.C., M.P.; C. Copinger, Q.C.; C. Rolleston, Q.C.; W. Brereton, Q.C.; P. Blake, Q.C.; J. Clarke, Q.C.; J. E. Walsh, Q.C.; J. Kernan, Q.C.; D. M'Causland, Q.C.; J. Carleton, Q.C.; R. Owen, Esq.; W. Ryan, Esq.; J. B. Murphy, Esq.; J. MacMahon, Esq.; W. Exham, Esq.; J. Hamilton, Esq.; C. Tandy, Esq.; W. J. Sydney, Esq.; J. A. Byrne, Esq.; J. C. Neligan, Esq.; R. Carson, Esq.; R. Dowse, Esq.; A. Hamill, Esq.; C. Palles, Esq.; F. L. Dames, Esq.; P. Keogh, Esq.

1. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. GERALD FITZGIBBON, Esq., Master in Chancery.

I am not sufficiently acquainted with the effects of the changes made by the English Procedure Acts to justify the expression of any opinion on the question whether these changes have, on the whole, produced a balance of good or a balance of evil to the litigants who stand on the honest side of suits in England.

Seven years' practice in the Irish Courts, under the new law, enables me to state some of the effects of the change in our procedure, which may be useful in considering whether the course of justice has been simplified, costs diminished, and right decision secured, by the new code here; and how far, and in what particulars, this new law stands itself in need of amendment.

A great many of the changes made by the Irish Procedure Act of 1853 may be regarded as mere novelties, as unimportant to suitors as the changes of fashion. Many of the alterations, also, were improvements which advances in civilization and new social and commercial relations had suggested, if not demanded, long before they were made. Impatience of some existing abuses and defects had given occasion for agitation; and this soon, by exaggerations, produced a thirst for innovation which was not to be satisfied by merely useful and cautious reforms. Such of the changes introduced by the Common Law Procedure Acts of 1853 and 1856 as fall under this head of useful reformations, are sufficiently obvious, and I do not think it necessary to make any enumeration of them. Those which have done mischief are not so easily detected, and the suitors themselves, while they suffer, are not always sensible of the source from which the evil flows upon them.

The first change which I consider injurious is that which fuses the functions of the writ and declaration, and produces the composition called a summons and plaint. In my opinion, the English reformers wisely left the party who felt a grievance at liberty to commence his suit in the ancient method, by the short, simple, and inexpensive writ, which merely informs the wrong-doer that he must appear in a court of justice to answer some complaint, of which a formal statement will be produced as soon as he enters an appearance.

In many cases an injured party has but a short and unexpected opportunity of serving the writ upon an absconding adversary, or one who, though habitually resident abroad, has done an injustice to one residing here, which cannot be adequately redressed by a suit in another country. Such an opportunity may be lost before the complaint can be formally stated in a pleading.

The service of a writ will often produce a compromise, and this is a reason why that first step should be as easy, as simple, and as inexpensive as possible. A process which merely informs a man that a suit is commenced against him, and which contains no detailed statement of the complaint, is not calculated to excite the spirit of contest, as the imputations too frequently are which angry parties put on record in the pleading. One served with a simple process, calling only for an appearance, may hasten to settle, without employing even an attorney. But when a man is served with a long plaint, imputing acts done maliciously, and without reasonable cause, or done fraudulently, &c., and containing half a dozen different statements when there is but one grievance, it becomes a different affair, which it is unsafe to meddle with unless well advised; this document must be submitted to an attorney, and by him to a lawyer; the exaggerations must be corrected, misstatements must be contradicted, imputations of malice and fraud must not be countenanced; and the chance of a settlement soon disappears. These are not the only objections to this confusion of the process with the pleading; and the utility of thus confounding them appears to me not only questionable, but nugatory at best.

The second change which I consider as injurious is that which relates to the venue. The old law entitling the defendant to bring back the venue to the county in which the transactions took place, and in which alone the evidence existed, was not productive of any injustice or inconvenience that I can remember. The new power of selecting a distant county, the most inconvenient to the defendant, can be, and often is, abused. The correction of this abuse is referred to the Court, which has to determine, on affidavits, to which side the balance of convenience inclines. This preliminary contest, founded upon long affidavits, and generally carried on with two counsel at each side, costs the parties a considerable sum, without any tendency towards a determination of their dispute. This balancing of convenience and inconvenience upon affidavits of parties and their attorneys, is often a difficult and always an uncertain process. This is one source of those expensive motions in the Irish courts which were the subject of animadversion in the debate from which the present commission emanated.

The third change which I shall notice, is very much the most important, and deserves the serious attention of all who desire that legal controversies should terminate in just decisions—I allude to the abolition of the ancient rules of pleading, and the substitution of what professes to be a short and simple system of procedure.

The law of pleading was a very ancient part of our jurisprudence, and, in one important characteristic, differed from that of any other nation. By our law the parties were bound so to conduct their allegations on the record as to arrive at some assertion of fact or of law at one side and a denial of it on the other, and which assertion and denial they agreed to submit for decision as the matter in difference between them.

Highly approving of this peculiarity of the English procedure, Mr. Stephen says:—"By the general course of all other judicatures, the parties are allowed to make their statements at large (as it may be called) and with no view to the extrication of the precise question in controversy; and it, consequently, becomes necessary, before the Court can proceed to decision, to review, collate, and consider the opposed effect of the different statements when completed on either side, to distinguish and extract the points mutually admitted, and those which, though undisputed, are immaterial to the cause; and thus, by throwing off all unnecessary matter, to arrive, at length, at the required selection of the point to be decided."

From this, he truly observes, the Common Law of England differs, by obliging the parties to come to issue, "that is, so to plead, as to develop some question (or issue) by the effect of their own allegations, and to agree upon this question, as the point for decision in the cause; thus rendering unnecessary any retrospective operation on the pleadings, for the purpose of ascertaining the matter in controversy."

The precise effect of the Irish Procedure Act has been to obliterate this characteristic feature of English jurisprudence, by which it had been, from the earliest period of our history, distinguished from all others.

To say that the fabric of our judicature was disfigured by this change, or that it was not improved by abolishing that which distinguished it from all other systems, would be to beg the question. But certain it is, that the Act of 1853 has abolished this peculiarity of English procedure, and has allowed the parties, or rather has enjoined them, to make their statements at large; and, for the ancient obligation so to plead as to develop the question in dispute, has substituted a retrospective operation on the pleadings, for the purpose of ascertaining the matter in controversy. What the practical effect of this change has been I can but inadequately demonstrate by reference to a few of the many cases in which it injuriously operated in the course of my own practice.

The 10th section of the Act of 1853 enacts, "that

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Answers as to Practice and Procedure.

Gerald Fitzgibbon, Esq., Master in Chancery.

the summons and plaint shall contain a true and succinct statement of the plaintiff's cause or causes of action." The 16th section enacts "that the plaint shall not be considered invalid on account of any verbal or technical error or omission;" and it refers the decision of the question, what is, or what is not, a verbal or technical error or omission, to the Court; but concludes with an injunction "that all errors and omissions which have not a manifest tendency to mislead the opposite party shall, in all cases, be deemed merely verbal or technical."

To determine what has and what has not a manifest tendency to mislead, has been, in many cases, a difficult duty of every Court and Judge since this Act came into operation, and has been the subject of many of those expensive motions before alluded to. No one of the motions on this point had any tendency towards deciding the question really in dispute between the parties; every one of them, in my experience, was an expensive contest on nothing but form, in which the money of suitors was fruitlessly expended.

These motions have been one of the consequences of giving the plaintiff liberty to state his case at large, without observing any of the forms heretofore used, provided his statement sets forth a cause of action good in substance. The 5th section having abolished all special forms of action theretofore known, and the 6th section having confounded them all under one general name and description of personal action, it is left to the wisdom of Judges to decide in each case what general statement shall in future be considered as setting forth a cause or ground of action good in substance, regardless of all form. The ancient classification of actions, in many cases, determined the mode of pleading, and usefully determined it. Forms of pleading were appropriated to the several forms of action, and rules resulted which were generally known and reasonably certain For these rules the new law substitutes the discretion of the Judge, which is never known until it is tried; and this trial is ever of uncertain result. What to one Judge will appear, in the plaintiff's statement, a ground of action good in substance, to another may appear the reverse. The established forms of action were a refuge from this uncertainty.

The 10th section enacts, "that the summons and plaint shall contain a true and succinct statement of the plaintiff's cause or causes of action." It was thought by some lawyers, that this enactment obliged a plaintiff to confine himself to a single statement of each cause of action; as it seemed impossible that several statements of one and the same ground of action could be true, if they were substantially different from each other; and, if only formally different, it seemed equally impossible to hold that this plurality of forms, when only one ground of action existed, could be a succinct statement of that one ground.

In the case of Harrison *v.* Lynch, which was in the beginning of 1854, the plaintiff sued on a contract for the price of a large quantity of tea, sold by sample. It was but one transaction, and a single contract; yet the plaint contained nine counts, all confessedly founded on one breach of contract, viz., the rejection of the tea, and refusal to pay the price. This was thought a fit case in which to complain, by motion, that this plaint was embarrassing, not true, and not succinct. The Court, however, held that the plaintiff had a right so to vary the statement of his cause of action, although the evidence which should prove one of his counts to be true would necessarily falsify the others.

Since this decision, the multiplication of counts has been more abused than I ever knew it to be under the ancient rules of pleading. With the plenary power of amendment now given to the Courts and Judges, at every stage of the proceedings, it seems hard to justify this practice of ringing the changes on the facts which constitute the sole ground of action. There appears no just reason why the plaintiff should not be obliged to state his case according to facts which must be in his own knowledge, the power of amendment being amply sufficient to prevent defeat by accidental or unforeseen variances.

The 68th section of the Act of 1853 provides, "that all facts stated in the plaint, and not traversed by the defence, shall be taken as admitted, for all the purposes of the suit." The 56th section enacts "that the defence shall state all facts which constitute the ground of it." The combined effect of these sections is, to compel the defendant, not only to state affirmatively all the facts on which he relies, but to traverse all the allegations in the plaint, the admission of which may furnish his adversary with arguments to damage his case with the jury. A multitude of issues is thus raised, of which many, and sometimes all, are wholly beside the question which the parties want to try. This is a fruitful source of useless expense, and sometimes leads to great embarrassment.

The case of Kelly *v.* Taylor occurred in 1854. It was the ordinary case of an attorney against his client for recovery of a bill of costs. The pleadings were long, and twenty-three issues resulted from the retrospective review of them, on summons before a Chief Judge. One of these issues was, by consent, at the trial, struck out, being unintelligible to the Judge and to the counsel at both sides. The jury were required to give an answer to each of the remaining twenty-two: they were between four and five hours confined before they could agree on these answers. When they did agree, and when all the findings were read from the issue paper, each party claimed the general verdict. After much argument, the Judge declined to decide between them, and returned the findings as he got them from the jury, leaving the full court to determine which of the parties was entitled to the postea. The Court heard a long and expensive argument on this question. As well as I can recollect, the plaintiff succeeded. Under the old system of pleading, the record for trial, in such a case as this, would not have occupied half a page of brief. The retainer being proved, a verdict for the plaintiff would have followed, subject to a taxation. The taxing officer would have settled the amount, great expense and great delay would have been avoided, and justice would have been less perilled.

It would be instructive to examine one of the trial briefs now used in such a case as this. It would be found to contain, first a full copy of all the pleadings, next a copy of the abstract of these pleadings, which is to stand in place of the abolished record—this abstract being substantially another copy of the pleadings; and thirdly, a copy of the issues settled as the result of the pleadings. Then would follow the statement of the plaintiff's case, and of the alleged case of the defendant; all which would appear to be a repetition of the succinct and truthful pleadings.

The 69th section repeals all Acts which gave a right to plead the general issue; and the 70th section enacts that every defence, by way of denial, shall traverse some one or more material facts, in actions on contracts; and that a defence which admits a contract, but relies on avoidance, discharge, or illegality for fraud or otherwise, shall be so expressly pleaded. The 71st section contains a like provision in actions of tort. These sections have impliedly abolished the general issue in all cases, and have enjoined special pleading, in lieu of the general plea which put the plaintiff on proof of the facts which gave him his right of action, in those cases to which such a general plea was appropriate. The defendant now must specially deny the plaintiff's facts, and specially plead his own in all forms of complaint.

The enactment that all facts stated and not denied are to be deemed as admitted is confined to facts stated in the plaint. The facts alleged on the side of the defendant are not, by any express provision of the Act, to be deemed admitted unless denied. The 48th section prohibits a replication, unless by leave of the Court. The prohibition of further pleading, after the

defence, without the leave of the Court, created a necessity for another class of motions to obtain this leave. The power given to the Court to grant such leave is restricted to cases in which the real question or questions, whether of fact or of law, between the parties, cannot conveniently be raised and put in issue by amendment of the previous pleadings. This imposes on the Court, or single Judge, as the case may be, the duty of discovering from the pleadings, so far as they have gone, what is likely to be the real question or questions, whether of fact or law; and also the duty of deciding how such question or questions can be most conveniently raised, whether by amendment of the previous pleadings (viz., the plaint and the defence), or by allowing further pleadings. What different opinions different Judges may hold on these questions, must occur to any one who knows anything of forensic discussion and judicial capacities. This motion for liberty to reply, which may thus end in an order on the defendant to amend his defence in some specified way, so as to raise what the plaintiff may represent as the real question or questions in the case, one would think, ought to be a motion on notice to the defendant; that great injustice may be done by making such an order ex parte, appears too obvious to admit of question: yet on this point the several Courts do not agree. The Queen's Bench holds a notice to be necessary: the Common Pleas and Exchequer deal with the motion ex parte; a strong illustration of the capacity of Courts and Judges to differ in their views. This is another source of those motions which have called down animadversion on Irish procedure, with an implied animadversion on Irish practitioners, if not also on Irish Judges. These motions for leave to continue the pleadings beyond the defence, are founded on an assumption that parties and their counsel, with full knowledge of the facts, either cannot or will not so plead as to raise the real questions in dispute, unless controlled or guided by Judges, who know nothing of the facts until informed orally of them by counsel for one or both the parties. They are a makeshift to supply the place of known rules of pleading, the violation of which was the occasion of the special demurrer, which, at less expense, and much more certainty, would correct and punish, with costs, the party who had so pleaded as to embarrass his adversary, or defer unnecessarily the tender or the acceptance of issue. Every allegation in a defence which a plaintiff thinks it necessary to deny, becomes the subject of an issue to be tried. Everything which the plaintiff can allege in avoidance of the defence, drives him to a motion for liberty to reply. These new allegations, when stated in a replication, if not admitted by the defendant, become the subject of so many issues. The number of questions thus raised on the pleadings, if sent for trial, in the shape of separate issues in the abstract of nisi prius, would create confusion at the trial. To prevent this, an issue has been sometimes adopted, with the sanction of some of the Judges on the summons to settle the abstract of the pleadings, that is, an issue to try whether the defence is true in substance and in fact. This is a comprehensive, and, in my humble opinion, a mischievous extension of the old replication de injuria, by which the defendant is put to the proof of his whole defence. Several of the Judges have expressed strong aversion from ever granting this general traverse—imposing, as it does, on defendant the necessity of proving every material averment in his defence, the oppression and mischief which may flow from it are obvious enough. It creates a difficulty and great uncertainty as to the proofs by which the defence is to be established. When counsel is charged with the duty of directing these proofs, he soon becomes sensible of the peril to which he exposes his client, when he determines that any fact alleged in the defence is immaterial, or may not be disputed; and that it does not, therefore, require to be proved. What to him may appear immaterial, to the Judge, at the trial, may appear a substantial fact of the defence. What might have been admitted, if the proof were tendered, may be stoutly denied when the adversary discovers that the evidence is not at hand, and cannot be produced. A prudent counsel, therefore, will not run the risk, when he can avoid it by directing the proof. Great, and, in some cases, vexatious expense is thus inflicted on suitors, by the adoption of this general denial of the whole defence, implied in the issue whether it is true.

As a ground for abolishing the general issue, and forcing a defendant to plead the facts of his defence specially, it was assumed that the plaintiff suffered, or might suffer injustice by concealment of the facts relied on as a defence, until they may be, by surprise, disclosed to him at the trial. I do not remember any proof given that such a ground of complaint existed. My own experience is opposed to it, for I cannot remember one instance in which a plaintiff was taken by surprise at the trial, because of the general issue being pleaded.

This issue most frequently occurred in actions on the case, actions of assumpsit, and actions of debt on simple contract. The plaintiff in most of these being bound to prove a title to recover, *ex æquo et bono*, the defences provable under the general issue commonly consisted in the denial of the facts on which the plaintiff relied; and on this issue the defendant was allowed to disprove by evidence the allegations which the plaintiff was bound to establish. The true nature of the controversy was made apparent by the principles on which these actions were founded; and I never knew an instance in which both parties did not come to the trial of the general issue prepared with all such evidence as they really had to meet the case of the adversary, and to contest the real question in dispute upon its merits. It was after the new system of special pleading was introduced, that the difficulty of bringing a case to trial upon the merits was frequently if not universally experienced. I believe that in England the Judges had frequent cause to regret the restrictions which were by the Rules of 1834 imposed on this long established mode of pleading in the cases to which it was properly applicable. In truth, this general plea, which merely denied the liability of the defendant, became necessary in those actions wherein the plaintiff was bound to prove an equitable as well as a legal right to recover, and in those actions wherein he asserted some liability of the defendant which was against some common law right. The entire burden of proof lay on the plaintiff in such cases, and special defences were neither necessary nor applicable. In most instances the whole question was whether the plaintiff's case was true; and if it was true, and supported by sufficient evidence in general, there was no answer to it. Limitation, and some other matters, in bar, or discharge of the liability, when such bars existed, should be specially pleaded; and the principles of pleading in these forms of action were well settled and known. The exclusion of the general plea, and the substitution of long statements in detail, has done much to create expense, to encourage ingenuity and craft, to defeat justice, and to disparage the law. The revival of the distinct forms of action, and of the ancient rules of pleading applicable to each, is the proper remedy for the evils introduced by the abolition of this important and useful portion of English procedure. This reformation is much to be desired before the men pass away who have studied and who still remember the ancient law. These rules have not been abolished in England, and there is no reason for creating such a difference between the procedures in the two countries. The difference is itself an evil, and calls for correction.

The 80th section, which preserves the right to demur for insufficiency, changes the old rule of general demurrer, by obliging the party to assign the grounds of objection in the demurrer itself. The 81st section was designed to remedy what was assumed to be an intolerable grievance in the law which allowed demurrers for want of form. The

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abuse of this power was asserted to be inveterate and extensive, and was the subject of much declamation against the old system of pleading. For the special demurrer the Act substitutes a motion to the Court whenever a party conceives that a demurrer or a pleading of his adversary is so framed as to embarrass or delay a fair trial of the case.

It was an elementary principle of the ancient law of pleading, that a party could not demur to a demurrer—not even to a special demurrer. The new species of special demurrer, by motion, is allowed even to a general demurrer for insufficiency, if it can be shown to the Court, or a Judge, that it is framed to delay or embarrass a fair trial of the case. Each party being by the old law bound so to plead as to facilitate the evolution of an issue, the special demurrer was nothing but a complaint that this duty was evaded, and that the forms used were, whether by want of skill, by negligence, or by craft, such as to defeat or frustrate this great object of pleading. Many known rules and many principles were established to force and to guide parties to this great end of pleading, viz., the development of the question in controversy, whether of fact or of law. Whatever embarrassed or delayed the adversary in his sincere efforts to arrive at this question was vicious. The goal or end towards which the pleaders were directed was the issue or question in dispute. The goal set up by the new law is the trial, which is a stage further on. The necessity of coming to a single issue is nowhere enjoined by the Procedure Act, and is, in truth, ignored. Hence we see that the pleadings, on a review of them before a Judge, produce many issues, and that the parties must proceed to try, not a single question, but a multitude of questions, to each of which the jury is called on to return a separate answer. As the law allows the pleading to terminate in this multiplicity of questions, its tendency towards this end, and its divergence from the course which would lead to a single issue, is no longer a tenable objection. The party who moves to get rid of, or to reform an embarrassing or a dilatory pleading, must satisfy the Court, or a Judge, that it hampers him in an honest effort to arrive at a trial of such questions as, upon a retrospective view of the whole pleadings at both sides, may finally be settled as the proper questions to be tried. What or how many these questions may be, can be only conjectured until the pleading is concluded, and until the parties have agreed on the issues, or a Judge has settled them. Therefore, those questions cannot be known at the time when a motion to set aside or reform a vicious pleading comes before the Court or a Judge. It is obvious that a Court or Judge who knows nothing of the case until in the discussion of the motion it is expounded orally, upon unfinished pleadings, must have great difficulty in understanding, and in deciding whether the contested form of pleading is or is not so framed as to embarrass or delay a fair trial, the questions to be tried being yet undefined, and only obscurely to be conjectured. Motions of this class are very frequent, and much contested, and the Judges are often divided in deciding them. On a motion to set aside a defence, as embarrassing, which came before two Judges of the Queen's Bench, the Judges, after long discussion, disagreed, one of them being of opinion that the defence had a certain sense, and that if taken in this sense, it was either a good defence, or if not, that it was open to a general demurrer; therefore, that it raised an issue, either of fact or of law, and, therefore, should not be set aside as embarrassing. The other Judge considered it ambiguous, and desired to set it aside on that ground, as embarrassing. But, as the Court was equally divided, it pronounced no rule on the motion, and, therefore, that the defence should stand. This result having been announced, I asked how a defence could be allowed to stand as not embarrassing, on the meaning of which two Judges could not agree. This question raised a laugh at the Bar, which was fatal to the pleading, and decided the motion in my favour.

The uncertainty of the law was never more conspicuous than it has been upon these motions to correct embarrassing plaints and defences. Some practitioners pass over the most embarrassing absurdities in the adverse pleadings; and rather than run the hazard of failing on a contested motion, rely upon the chance of escaping traps or crafty issues on the summons to settle the abstract.

To a plaint against the surety of a defaulting barony collector, an equitable defence was carefully framed, on the ground that the Grand Jury, by their dealings with the collector, had discharged the surety. A motion was made to set this defence aside, as embarrassing, and this came before a single Judge. Several objections were pressed against the defence, but it was not at all impeached for duplicity; after long argument by two counsel on each side, the Judge ignored all the objections that were made; but he raised one himself, and set the defence aside for duplicity—a fault which the plaintiff's counsel had not imputed. I requested of the Judge to state wherein the duplicity consisted, and begged of him to specify the two complete defences which he thought were involved. After some hesitation, he did so, and gave leave to amend, on payment of costs. The defence was then amended, precisely according to the Judge's suggestions, and severed into the two defences, which he held to have been improperly combined, and the two defences were filed pursuant to the leave which he had granted. The counsel who had argued the motion on the part of the plaintiff both left town on circuit before the new defences were filed, and these were submitted to other counsel, who had not been on the motion. The new defences were objected to, as being severally insufficient; and a motion to set them aside came before another Judge. On each defence being read this Judge immediately pronounced it to be defective, without the averments that were made in the other defence. I then read for him the defence, as it had been originally framed, and stated how it had been set aside for duplicity. With many expressions of regret for differing with the able Judge who had so decided, and not without some expression of surprise at the decision, his Lordship declared that he could not agree in his view, and he set the defences aside, giving liberty to amend, by combining them as they had at first been combined. Thus the defendant had the gratification of finally succeeding in placing his pleading on the files, but had to pay the costs of two motions to establish that his pleading had been originally correct. The matter in dispute still remained undecided, and the motions were useless to both plaintiff and defendant.

Although the injustice done to suitors by the spurious litigation which has sprung from this so-called simplification of the law is not often as conspicuously exposed as in these instances, yet great injustice has been, from term to term, and from day to day, inflicted, and the money of suitors wasted in futile discussions, to an extent which it is painful to contemplate, ever since this new Procedure Act came into operation.

It seems to have been assumed, that the abolition of all the settled forms of procedure and of pleading would remedy complications of the law, and secure that simplicity so much lauded and so ardently desired. But the event has disappointed all such expectations. The effect has been to complicate and to confound procedure in what were before its simplest forms, and most certain results.

Drury *v.* Gwyry was an action on two promissory notes, at the suit of the payee against the maker. Several defences were pleaded; but the making of the notes was not disputed. The issues, five in number, were settled before the Chief Justice of the Common Pleas. These I had not seen until I got my brief for the trial. The pleadings were very long, and with the abstract of Nisi Prius (the substitute for the old record) filled many pages, and swelled the brief to a very large size. Being a country case,

a day had been fixed for the trial. I proceeded to read the brief the night before. I found it impossible to understand either the pleadings or the issues, and went to court utterly bewildered. I there found that the Chief Justice, at his rising the evening before, had struck the case out of his list, declaring that he could not understand the abstract of pleadings or the issues, although they had been settled on a summons before himself. He sent the parties back to the Court for liberty to amend their pleadings and to raise intelligible issues. Considerable costs had been incurred preparing for trial and bringing up several witnesses from the country, the defendant and his witnesses being all resident in Clonmel. The case was subsequently tried on amended pleadings. The plaintiff had a verdict. The notes amounted to about £200, a considerable part of which must have gone in the costs between the plaintiff and his attorney, not payable by the defendant, and the defendant's costs must have been oppressive; a result entirely owing to pleadings and issues which contributed nothing to the just decision of the case. On the old declaration and plea of *non assumpsit* the case would have been speedily and properly decided in half the time and at one-fourth of the costs.

That I should state many of the cases which occurred in my practice cannot be expected; the few I have mentioned are mere examples, and will sufficiently illustrate some of the evils created by an abortive attempt to simplify the laws by which the complicated transactions of a free and commercial nation are to be governed, than which there is nothing in the nature of things more impossible. The law of pleading in civil suits had been settled, in the course of centuries, by Judges of the greatest learning and ability, instructed by experience and assisted by able lawyers, in repeated discussions of every important principle—the only way in which such a law could or can be made reasonably perfect. A fabric had been thus erected which had long been the boast of English jurists and English Judges. The erection of it was the work of the juridical wisdom of ages. Its destruction was a summary act of legislative power. The substitute for it is the hasty fabrication of empiricism. The framers of the Irish Procedure Act assumed that all established forms were either absurd or mischievous, and that the abolition of them was the first great step towards the simplification of law. Forms and fictions which had been for centuries established, which had been approved of by sage writers and jurists, and had been jealously guarded by the wisest of our Judges, suddenly became the subject of sarcasm and ridicule. The abuse of them became a road to popularity, and the abolition of them was so loudly applauded by the multitude, who did not understand their utility, that the few who did were abashed, and no one raised a voice in support of them.

If it were possible to read the mass of absurdity, of falsehood, and of inconsistency which the last eight years have placed on the files of the Irish courts in the shape of so-called truthful and simple pleadings, and if it were possible to narrate the series of forensic discussions to which these shapeless pleadings gave rise at the expense of suitors for justice—if the censures from time to time expressed by able Judges upon the mischievous novelties by which the administration of the laws was clogged and impeded could be recalled and repeated, we should be astonished at the apathy of the public and its rulers by which this evil has been so long tolerated.

The estimation in which legal forms were held until the recent rage for abolition arose may be judged of by the voluminous collections made of them by the most successful lawyers and the most eminent writers and commentators. To say that those lawyers and writers were all astray and blindly wedded to quirks and quibbles, is a bold assertion. The classification of complaints and the adaptation and appropriation of well-considered forms to the several classes must assuredly be a rational mode of securing certainty, precision, and clearness. To destroy this classification, to huddle all together into one mass, and to call this mass by the name of personal actions, to abolish all settled forms of complaint and defence, and to announce to the person who says he is aggrieved that he must state his grievance truly and succinctly; to say to the defendant that he must state the facts of his defence truly and with as much brevity as is consistent with clearness; and to illustrate this vague and general instruction by a jejune schedule of forms suited only to the simplest cases, requires only one moment's consideration to see what a mockery it is of legislation. It is like burning the mariner's tables, charts, and compass, and directing him to make his voyage through the ocean by the shortest and straightest course—for example, like that taken by a boat over a fish-pond, exhibited for his special instruction. The mischief of special demurrers was the great argument for this sweeping abolition of all established rules of pleading and of the forms which gave rise to these special demurrers. I doubt that the extent of this mischief imputed to special demurrers was ever ascertained or even inquired into. According to my recollection of twenty-three years' practice while these demurrers were allowable in Ireland, the instances of them were very few in comparison with the general extent of legal business. It occurred to me to look through my fee-book (which I had very accurately kept) for eleven years and a-half of practice outside the bar. I find recorded a full proportion of pleading business both for plaintiffs and defendants. I find that demurrers, both general and special (for my book does not distinguish them), occurred in only nineteen cases. The entire amount of my fees in these cases of demurrer, including directions, revision, noting of books, and argument, was fifty-three guineas; while the fees of my whole practice for the same time amounted to £17,022. There were some years in which no case of demurrer occurred. In the subsequent eleven years and a-half, from August, 1841, when I was called inside the bar, to January, 1854, when the Procedure Act came into operation, demurrers occurred in thirty-two of the cases in which I was concerned. I remember some of these were general demurrers. The total amount of my fees, in all, was ninety-six guineas. The total amount of my fees for these eleven and a-half years was £33,947. In both periods, therefore, the demurrers amounted to about 6*s.* for every £100 of my fees.

In the seven years immediately preceding the operation of the new Procedure Act, the total amount of my fees for revising pleadings, first drawn by junior counsel, was £316. In the seven years of my practice after the Act came into operation, I received for revising new forms of pleading under it, which had been drawn by junior counsel, £490. In these seven years for settling issues, on a review of the pleadings, I received £237. Most of these fees were for attending before the Judge, on a summons to settle issues, and I never so attended without the aid of junior counsel. Both the above sums belong to the costs of pleadings under the new Act; and they are very nearly double the amount paid for like business in the same number of years under the old law.

The motions for setting aside pleadings, and attending to oppose such motions, are not, in my book, distinguished from other motion business. I have a clear recollection that these were very frequent. They would certainly exceed one hundred guineas a-year, which should be added to the costs of pleading under the new law. This would make those costs four times greater than those of the old pleading, which is a very significant result.

I am thus forced by my own experience to discredit much that I have read and heard of the alleged abuse of special demurrers. The substituted motion to correct embarrassing pleadings is very much more abused than I ever knew the remedy by demurrer to be. It is a more expensive proceeding, much more frequent, and always more uncertain. It involves no question

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that the parties have any interest in deciding, and is never any thing but a wrangle about words and phrases.

The classification of actions, and for each class an appropriate form of pleading, in my opinion, was of great utility; and reasonable adherence to the rules touching this classification and these forms of pleading ought to be enforced. A demurrer, with the causes assigned, was an effectual mode of enforcing this adherence. The demurrer books gave the Judges the time and means of deliberately considering the pleading and the objections to it, before the argument came on; and they were less liable to mistake and misapprehension than they are now on the motion, when they have to decide on the statements of counsel, and reading in court, for the first time, on the discussion of the motion. When this motion is to the full court, the decision, however erroneous, is final; and thus forms of pleading are often allowed to pass which lead to absurd and embarrassing issues, which are tried at the expense of the parties, and at the peril of justice.

Against the abuse of special demurrers, it appears to me that an effectual remedy may be provided by a rule or enactment to this effect, viz.:—"That no special demurrer shall in any case be allowed unless the party taking it shall have previously, by written notice, apprized his adversary of the defect, and called upon him to amend within such time, and in such manner, as shall not cause any delay to the party so objecting; which notice, signed by the attorney of the party serving it, shall be sufficient authority to the officer to allow such amendment to be made, and of which notice no costs shall be allowed."

The concluding provision, denying costs, would prevent frivolous objections. The power to amend would relieve parties from the consequences of mere blunders and slips; and demurrers would be retained as the appropriate means of deciding important questions which sometimes do arise on matters of form. Such demurrers are the proper means of correcting and improving forms of pleading, and of deciding whether a party has or has not a right to use a form of complaint or defence that may be justly advantageous to him in the peculiar circumstances of his case, although it deviates in some particulars from the formula in general use.

On an attentive consideration of the Irish, and I believe also of the English Procedure Act, it is obvious that the means used for simplifying the law, and for preventing failure of justice by blunders, and departures from rigid rules, is the substitution of an appeal to the discretion of the Court, or a Judge, for the rule of law. Laws and written rules are unbending, and apparent hardship is sometimes suffered from enforcing adherence to them. It seems plausible to give a discreet and learned Judge the power to prevent this hardship by substituting his judgment in place of the rule. This is simply enacting that his will shall, in certain cases, be the rule. The authority to amend falls within this category of legal reforms, and may be referred to as an illustration. This authority was at first sparingly given to the Judges, and some very able Judges cautiously, and often reluctantly, exercised even the limited power so given. They not unfrequently deplored the carelessness which reliance on this facility of amendment introduced. That power, however, has at length been given without limit, and the exercise of it even peremptorily enjoined in certain cases. A few instances in which this discretionary power has been used, and, on the other hand, in which the exercise of it has been refused, would demonstrate the inevitable uncertainty of this appeal to judicial discretion, and would justify Lord Camden's designation of it as the law of tyrants.

In an action to recover the amount of a promissory note for £60, a long defence according to the new Procedure Act was filed, to support which the defendant himself was produced as the sole witness. His testimony falsified every material allegation in the defence; but disclosed to the mind of the Judge, that a new defence essentially different might be pleaded. The defendant, therefore, was allowed to withdraw his defence, and to file a totally new one. The trial was, for this purpose, adjourned for a week. The parties, on the new pleading, came before the Judge to settle new issues. The trial was resumed, lasted two days more, ended in a verdict for the defendant on his new defence; was followed by a litigated motion, on which the verdict was affirmed. This verdict was founded on the allegation of a verbal agreement to renew the note, and the defendant got the time as the result of his new defence; but the costs which he had to pay, and which were not recoverable from the plaintiff, could not have been much, if anything, short of the sum in dispute, to which he was still left liable; and the plaintiff's costs of the abortive suit exceeded double that sum.

Another case occurred shortly after, for recovery of £1,200 claimed for a survey of two extensive estates, one occupied with streets, the other consisting of a rural district adjoining. The survey had been undertaken on a written agreement to pay for it at so much a day for the time devoted. It was laid down on two large general maps, and about two hundred smaller maps of the several tenements. It was the work of over twenty years. The two hundred maps had been completed and delivered to the owner in his lifetime; the two large maps were delivered to the owner's executor about two months after the testator's death, and were received by this executor, who was also the heir, and had acted during his father's lifetime, and had approved of the whole work. The action was against the executor. The plaint stated that the work was completed and the maps delivered to the testator. The evidence was that two of them were delivered to the executor. Leave to amend, by the insertion of half a dozen words, stating that part of the work was delivered to the executor, was refused by as able, as learned, and as conscientious a Judge as any on the bench. A verdict was directed for the defendant on account of this variance. The Court, however, set it aside, and allowed the amendment on payment of costs. Soon after the trial, and before the motion was argued, the plaintiff died; and and having bequeathed his property to charitable purposes, his family had no interest in the recovery of the whole amount. The executor accepted, in compromise, £100 and costs, and the case so ended without a second trial. Whatever was the loss, it fell on the objects of the testator's charity. It is not easy to imagine a greater stretch of the power to amend than that which one of these cases exhibits, nor a more restricted use of it than that which the second would prescribe.

The words "as the Court or a Judge shall think fit," or words of like import, often occur in the new Procedure Acts. The cases which I have mentioned (and many others might be cited) prove the uncertainty of the result in any appeal to laws so made subservient to the discretion of individual men.

By the 127th section of the Irish Procedure Act the party who succeeds at the trial is entitled, without any rule on the postea or inquisition, to mark judgment, and to issue execution in fourteen days; or, if the trial be in term, in four days, unless the Judge who tries the cause, or some other Judge, or the Court, shall order execution to issue at an earlier or later period, on such terms as may be imposed. This enactment gives a large and uncontrolled discretion, and, in some instances, a very important power of changing the possession of property to a large amount in cases wherein it may be impossible to get it back, though the right to it may be ultimately determined in favour of the party from whom it was taken by such speedy execution, founded on the decision of the Judge at Nisi Prius.

An instance which recently occurred will illustrate my objection to this innovation. An action was brought against the keeper of the extensive Custom-House stores by a revenue officer who had broken his leg. The basement of the building is underground,

and is divided into a series of wine-stores opening into a covered passage. At the door of each store there is an aperture in the arched roof of the passage through which the wine casks are raised by a crane, to be delivered to the owner on payment of duty. An officer is stationed at top, in the vicinity of these apertures, to see that nothing shall come up except what has paid duty. This officer comes at nine in the morning, and is bound to open the doors of the several stores below, and to leave them open during certain hours of the day, that the owners may have access to sample their wines, and allow their customers also to taste them in the stores. The entrance to the passage is, at one end, by a flight of steps. The officer, on his arrival one morning, in place of descending by the steps, and with his own hand unlocking the doors, as was his duty, went to the aperture at the remote end of the passage, and threw down his keys to the storekeeper's man, who was at the door below waiting to have it opened. This man and another were employed daily to roll out the casks for delivery into the passage, fix the slings upon them, and then go up to hoist them by the crane above. For their own convenience they used a ladder, by which to ascend to the crane when the slings were on the cask, thereby saving the time and labour of walking to the end, getting up by the stone steps, and then walking on the upper surface back to the crane. This ladder was furnished with iron points at the heels of it, and holes for these points were made in the flags, about a foot inside the door of the store below. When the door was shut each evening, the ladder was shifted forward to allow the door to close, and was thereby made more upright. In this position it was when the officer threw down the keys. The man opened one valve of the door, and was in the act of opening the other, when the officer stepped on the ladder in order to descend. He did not wait until the heels of the ladder were fixed in the sockets made for them; and the consequence was, that it slided from under him, and his leg was badly fractured by the fall. For this he brought an action against the storekeepers, imputing negligence. The plaintiff's sufferings were well calculated to excite pity. The defendant's counsel in vain contended that there was no case of negligence, and that a verdict should be directed for the defendant. The Judge held that there was evidence to go to the jury, and a verdict was found, with £300 damages. A bill of exceptions was tendered to and received by the Judge, founded upon several recent decisions in England, not at all as favourable to the defendants in those cases as was the case then at trial to the party so excepting. An application was made to stay the judgment and execution until the next term, and the defendant offered to lodge the amount of the verdict. The Judge refused to entertain this motion unless on notice to the plaintiff. This notice was then served, and when it came on, in two days after, it was refused with costs. The trial took place at the sittings after Trinity; and the exceptions, therefore, could not come before the Court until November. At the end of fourteen days the plaintiff entered judgment, and issued execution. The defendant was forced to pay the damages and costs. Believing that, however successful he might be on his bill of exceptions, he could not get back his money from the plaintiff, whose circumstances, he thought, made such a recovery hopeless, the defendant abandoned the exceptions, deeply mortified at what he felt as a great injustice.

Without pronouncing any opinion on the merits of this case, or conjecturing what might be the decision of it on the exceptions taken, I may fairly think that the defendant had a right to have the *nisi prius* decision reviewed, and that the 127th section of the Act, while it hastens to put the plaintiff in possession of the fruits of the verdict, runs the risk of doing irreparable injustice to the defendant. It appears to me, that this new law, therefore, stands much in need of reformation in this particular.

I would call attention to a defect in the Procedure Act which, in some cases, leaves an injured party without redress. In the present intercourse between the two countries, it sometimes, and I believe not unfrequently, happens that a transaction takes place in England, in which a party resident there, and having property—and, it may be, all his property—in Ireland, contracts a debt or liability to one permanently resident in Ireland. In such a case the aggrieved party cannot swear that the cause of action arose in Ireland; and he is, therefore, without any other remedy, except an action in the English courts. If he sues in England, he must give security for costs, and there are other inconveniences attending a proceeding there which may more than counterbalance the amount of his demand; he is, therefore, left without any available remedy.

Amongst the many powers given to the courts, it may be enacted that they should, on a proper case made, be able to allow a party resident in one country to serve process on a party residing in the other, although the cause of action arose in the country of the defendant.

I am very strongly of opinion, that the complete assimilation of the procedure in Ireland to that in England would be a great benefit to Ireland independently of the merits of the law in either country. The last appeal being to an English tribunal, before which, in most cases, English counsel must be employed, and consisting exclusively of Judges educated in the English law, it must—and, I have no doubt, must often—happen that an Irish appeal is decided without a perfect understanding of the case or the law affecting it. The law of pleading, in the two countries, is now widely different; and the divergence is increased by the retention in England of the different classes or forms of action, in proceedings subsequent to the writ, and the total abolition of these in Ireland. The general issue also is retained in England, with restrictions on its import, by published rules. In Ireland any plea that, even by hypercriticism, can be identified with the general issue is sure to be set aside. The result is that the record transmitted from Ireland, on a writ of error, is a perfect novelty to the English judges and lawyers; and sometimes exposes Irish litigation to ridicule, and Irish lawyers, and even Irish judges, to unmerited sarcasm.

A case was recently decided in the House of Lords, and the Irish judgment reversed, which may illustrate what I have here stated. The traveller of a Swiss House took a ticket at Belfast through to Derry. His baggage consisted of an ordinary portmanteau, and two cases which very evidently contained, not personal baggage, but merchandise of some sort. His ticket passed him over two railways, the property of different companies, and separated at Coleraine by a common road for a mile, over which the passengers were conveyed by an omnibus. The traveller (named Keys) got safely with his portmanteau and two cases to the Coleraine terminus of the Derry line. Having placed one of his goods cases under the seat of the carriage in which he was to travel, while in the act of placing the other under the same seat, he was stopped by the company's guard, and, after strong remonstrance was compelled to commit the second case to the custody of the guard, who placed it, along with the general baggage, in a separate carriage. This case contained nearly 200 watches, valued, at first cost, to a sum of £1,200. At the end of the journey, which was only twenty miles, and was performed in an hour, the watch-case was not forthcoming, and never was recovered. An action was brought by Keys against both companies, and Mr. William M'Cormack, whose initials appeared on all the rolling stock of the Derry Company, and who was therefore considered a proper party. These three parties pleaded separately, and each filed about twelve defences. M'Cormack, in one of his defences, denied any participation in the railways, or in the fares earned by them, and supported this defence by proof of a deed for the hire of his

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Answers as to Practice and Procedure.

Gerald Fitzgibbon, Esq., Master in Chancery.

rolling stock to the Derry Company. This being his real defence, and having no occasion for any other, he yet pleaded all the same defences filed by the companies. On each of these three sets of defences twelve issues were settled for trial. One defence pleaded by each of the three defendants was, that the lost case contained merchandise, and not personal baggage; and that the company had not contracted to carry it, and, therefore, was not liable for the loss of it. To this the plaintiff replied, that it manifestly contained merchandise, and not personal baggage; that the company received it without objection, and that, therefore, they were liable.

This replication was founded on an English decision, in the case of Sheppard *v.* Great Northern Railway Company, and the sufficiency of this replication became the sole question for decision in the House of Lords. This was referred to the Judges, who held it an insufficient answer to the defence; and, therefore, the Irish judgment for the plaintiff was reversed.

In giving judgment in this case, the Lord Chancellor animadverted on the whole proceedings, and on the lamentable complexity of the litigation, and of the mass of matter which, by courtesy, his lordship said, he should call pleadings. The tone and tenor of his lordship's observations plainly imported disapprobation—perhaps censure—on the Irish practitioners, if not also on the Irish Judges, as if they were answerable for the prolixities which, only by courtesy, could be called pleadings. Had his lordship been familiar with the new law of pleading peculiar to Ireland, the justice of blaming that law, and the injustice of blaming the courts and the lawyers, on whom that law is inflicted, would have been evident to his lordship's enlightened mind. Had the case occurred in England, on the same facts, or in Ireland, before the law was changed, the pleadings, and possibly the decision, would have been very different.

In conclusion, my opinion is, that the classification of actions and the laws of pleading ought to be restored, with such of the alterations of modern date as, on careful revision of the new Acts, shall be considered real improvements, when tested by the experience now had of them. That many of the discretionary powers now committed to the courts and Judges should be recalled, and written laws and rules promulgated instead, by which rights may be known, and certainty of decision, to some reasonable extent, secured.

The uncertainty and peril of litigation is but a small part of the evil which attends this adoption of the Judge's will as the rule of law. Practitioners, whose first object is, and ever will be, the success of the cause in hand, will turn from the study of juridical science, and devote a degrading attention to the tempers, the capacities, the prejudices, and the frailties of the Judges, upon whom, rather than before whom, it will be their business to practise. To describe the effects which this vilifying erection of judicial discretion and human will on the ruins of written laws must have upon the character both of the Bench and the Bar, would savour too much of satire, and it is foreign to my present purpose.

To frame wise laws, and to construct wholesome rules of procedure, so as to secure national benefit, must be the work of some able lawyers, who will devote the time and labour necessary for such a work. Such agency may be procured, as it was procured in framing the Act for abolition of fines and recoveries.

Great and accurate knowledge of the existing laws; long observation of their defects and their merits, in the course of extensive practice, can alone qualify any man for the task of revising and improving such a complicated code as that of England. Such a task is unsuited to a popular assembly, guided or misguided by ambitious eloquence. It is work for the head, not for the tongue. It must be performed in the quiet of retirement; and must, when produced, be taken on trust from the men selected and qualified for the due performance of it. No assemblage of men like either House of Parliament can profitably discuss the merits of such a work. The legislative powers of such assemblies can be usefully exercised only in the selection of able actuaries, and in adopting, unaltered, the result of their labours. The truth of this principle may be clearly established by a multitude of so-called reformations of our laws during the last thirty years, contrasted with the single Act to which I have referred as a conspicuous and instructive example.

(Signed), Gerald Fitzgibbon.

10, Merrion-square, North,
2nd August, 1862.

Edward Sullivan, Esq., Second Sergeant-at-Law.

2. Answers to Questions on Common Law Practice and Procedure. Edward Sullivan, Esq., Second Sergeant-at-Law.

Nos. 1 and 2.—The result of my experience of the working of the present system of Common Law pleading in Ireland is, that such system has been, on the whole, extremely unsatisfactory. It has brought about a most involved and perplexing system of making up records for trial, and of sending questions to juries, and it has led to very great and unnecessary expense. I do not think that this result is altogether to be attributed to the provisions of the Common Law Procedure Act in Ireland, as to the settling of issues, but the absence of any restriction in relation to the number of counts in a summons and plaint on the same cause of action, and the forced necessity which is imposed by the said Act of pleading almost every defence specially, have led to an embarrassing complication, which the system of issues, so far from simplifying, has positively rendered still more involved. It is a matter of frequent occurrence that a summons and plaint in an ordinary action (take one in slander as an example) contains five or six counts, each varying words spoken upon a single occasion. To each of these counts there will be frequently four defences—1st, that the words were not spoken; 2nd, that they were not spoken in a defamatory sense; 3rd, a privileged communication; 4th, a justification. These pleadings will be spread out in extenso in the Nisi Prius abstract, and there will be from twenty to twenty-four issues, some of them containing within themselves a host of other issues—such as whether the plea of privileged communication (which in Ireland must be specially pleaded), is true in substance and in fact. In this state of things, which is one of the simplest that occurs even in ordinary practice, the utmost confusion is likely to arise. In other classes of actions, viz., actions under Lord Campbell's Act, actions against carriers, actions for false imprisonment, and malicious prosecution, matters have been still worse; and it is not an uncommon thing to find a Nisi Prius abstract containing thirty or forty issues, covering ten or twelve pages of the brief, constituting a most unwieldy and ridiculous document. If the number of counts on the same cause of action was limited to one, and the embarrassing strictness of special pleading which the Common Law Procedure Act introduced into Ireland was relaxed, and the number of pleas restricted, it is possible that the system of issues might prove satisfactory; but upon the fullest consideration of the subject, in all its bearings, I do think that the entire system of special pleading, and of issues as it now exists in this country, is wrong, and that it should be done away with altogether, and that the system of pleading, as it now exists in England, should be introduced here, so that perfect uniformity as to pleading should prevail in the two countries. I approve

of the use of the general issue, as defined and regulated by the Rules of 1853, in England. I think it essential not to allow more than one count on the same cause of action, without the leave of a Judge. Having regard to the large powers of amendment which exist, there can be no difficulty in applying this rule, whilst its adoption will materially tend to precision and exactness. It appears to me of very great importance that the practice in Ireland of having defences and all subsequent pleadings signed by counsel should not be altered.

Nos. 3 and 4.—Apart from the practice rendered necessary by the introduction of the system of pleading and issues under the Common Law Procedure Act, I think that the Common Law practice in Ireland has worked well, and I do not suggest any changes in this practice save those hereinafter mentioned. A special jury under the old system ought, I think, to be given as a matter of right. I think that the consequences of taking the body under a writ of *capias ad satisfaciendum* should be the same in Ireland as in England, and that the provisions of the Irish Statutes, 33 Geo. III., c. 42, and 35 Geo. III., c. 30, which render the law on this subject in Ireland different from that in England, should be repealed. I think a party should be at liberty to mark an interlocutory judgment in such a manner as that the costs of a demurrer, or the trial of issues of fact, could be at once taxed and recovered against the unsuccessful litigant, without being obliged to wait for final judgment. Under the present practice a party succeeding on the argument of a demurrer is not allowed to recover his costs until pending issues on fact are disposed of, and *vice versa*. I think that either plaintiff or defendant ought to be at liberty, at a trial at Nisi Prius, to require that the evidence and the charge of the Judge who tries the case should be taken down by a sworn short-hand writer, on lodging with the Judge's Registrar such a sum as, in the opinion of the Judge, will be sufficient to cover the expense; and in such case the short-hand writer's notes should constitute the recognised report of the proceedings at the trial.

Nos. 5 and 6.—I think that the plan of summons and plaint and defence, as directed by the Irish Procedure Act, is preferable to the plan of writ, appearance, and declaration, as followed in England; and I also think that the venue system in Ireland is the best. I think that the provisions of the Irish Procedure Act of 1856, as enacted by the 25th, 26th, 27th, 28th, 29th, and 30th sections, should be extended to courts exercising criminal jurisdiction in England. By the English Procedure Act similar provisions are confined to civil courts, while in Ireland they apply to courts criminal as well as civil. It is somewhat anomalous that comparison of handwriting by witnesses should be legal evidence on a criminal trial in Ireland, whilst it would be inadmissible in England. The 29th section of the Act 17 & 18 Vic., c. 125, as to paying duty at the trial on an unstamped document, and the analogous section of the Procedure Act of 1856, in Ireland, should be amended, so as to enable parties to pay the duty and penalty when the unstamped document is lost or destroyed, and secondary evidence is given of its contents. It was decided by the Court of Exchequer in Ireland, in Connor *v.* Cronin (Irish Common Law Reports, p. 480), that the enabling provisions of the above sections do not apply to the case of an unstamped document not capable of production, and a considerable amount of mischief has resulted. The main provisions of the Common Law Procedure Act, 1860, in England, should be extended to Ireland. The enactments in this Statute as to misjoinder of plaintiffs, garnishee orders, interpleader and insurance covenant, are most useful.

(Signed), EDWARD SULLIVAN.

32, Fitzwilliam-place,
21st October, 1862.

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3. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. RICHARD ARMSTRONG, Esq., Third Sergeant-at-Law.

Pleading.

The system of pleading in Ireland may, in my opinion, be materially improved by introducing the English rule, which prohibits several counts on the same cause of action without leave of the Court or a Judge. The consequence of a variance might, as the law formerly stood, justify multiform statements of the cause of action; but with the present powers of amendment, I think one count only should be allowed for each cause of action, unless with leave of the Court or a Judge.

I think that in Ireland the general issue should be permitted, at least to the extent of its application in England; and that pleading and demurring (with leave) at any stage of the pleadings, and joinder of issue in fact (simpliciter), should be adopted.

As the plan of "issues," introduced into Ireland by the Common Law Procedure Act of 1853, often led to difficulty and confusion, and the discovery of the questions for trial under the former system was a very simple matter, I think the "issues," may be advantageously discontinued.

A habit foreign to the object of pleading has, since the Procedure Act, prevailed to a considerable extent, namely, the introduction of averments unnecessary to the validity of the count in point of law. This practice seems to proceed upon some expectation of possible advantage to the plaintiff, from the non-denial of these averments on the record. The defendant's difficulty is this, that a defence confined to a traverse of such averments would be plainly bad in law; and yet his pleader fears to pass them by, lest they should be held to be admitted under the 68th section of the Common Law Procedure Act, 1853; accordingly, we meet defences traversing matters material, with a traverse or denial also of the unnecessary averments. Motions to set aside these defences as embarrassing follow in natural succession, and thereupon orders have been made expunging the denial of the unnecessary averments, with a tack, "that plaintiff shall not insist on their admission for want of an express traverse." Such orders cannot, I think, be regarded as satisfactory, and were not thought so, I believe, by the Courts which made them; and it seems to me important to put an end to the occasion for them, which I think may be accomplished by a general order forbidding averments, prefatory or otherwise, not essential to the validity of the count in point of law; or by an express decision (which has never been made, though many opportunities for it occurred), "that facts" within the 68th section of the Common Law Procedure Act, 1853, mean "facts necessary to be stated to make the count sufficient in point of law" (so that no prejudice may be seriously apprehended from the non-traverse of immaterial statements), or perhaps, best of all, by a repeal of this section, leaving the general law, as to the effect of pleading over, to apply.

Another source of laxity in pleadings in Ireland since 1853 is an over-readiness to fall in with the popular phrase, that "every man may now tell his own story in his own way," and a consequent inattention to forms and precedents as compared with the usage in other times. I believe that the true end of pleading, which is (in furtherance of the rights and interests of suitors) to compel an early and precise issue between the parties, will be best attained by a general adherence to approved pleadings and precedents, as found in the reports, and in the recent books on this branch of law. I think that a resort to these examples of arrangement and order ought to be encouraged, and that a general rule on this subject, and its enforcement on proper occasions, would go far to revive a style of reasonable terseness and precision.

COMMON LAW.

Answers as to Practice and Procedure.

Richard Armstrong, Esq., Third Sergeant-at-Law.

Practice.

It will be admitted, I presume, that uniformity of decision is desirable on questions of practice. It seems inconvenient to find a decision of one of the Common Law Courts on a mere practice question dissented from in another court of co-ordinate jurisdiction; as, for instance, the Common Pleas decision, that "no rule" precludes the re-agitation of the motion, dissented from by the Court of Exchequer; and the latter Court requiring such an affidavit, to obtain security for costs, as neither the Queen's Bench nor Common Pleas think necessary. In the Consolidated Motion Court it is no uncommon thing to hear the same Judge on the same day make different rulings on precisely the same state of facts, according to the varying practice of the Court in which the cause happens to be. The remedy for these and like inconveniences is very obvious, and rests with the judges in consultation and conference.

On the question of practice, the constitution and operation of the Consolidated Chamber Court claim notice. It seems to me to be far preferable to the chamber system in England, and to be well adapted to insure uniformity of practice, if this uniformity were once introduced. In England, chamber orders are made, practically, without the aid of counsel, with closed doors, and without much (if any) official aid to the Judge. The reports show, as might under these circumstances be expected, what a considerable share of the business of the courts is represented by arguments to rescind or vary chamber orders. In Ireland the proceedings are public, and the Judge is attended by the Clerks of the Rules of the respective law courts. It is therefore almost impossible that the Judges in chamber should act under any misconception of the practice of the superior courts, while each of these courts in its turn derives information from its own officer of the rulings in Chamber. The result is that appeal motions are of rare occurrence.

I should approve of the adoption of the English system of writs of summons, with power to lodge money on appearance, and with like endorsements as now required in Ireland. I believe experience shows that a pleading does not become necessary in one out of a dozen cases commenced by writ in England; and before the Procedure Act the same observation applied to Ireland; nor do I see any object in filing pleadings unless when it becomes necessary to make up a judgment, or a record for argument or trial.

In the following instance, also, I would approve of the introduction of the English system, viz., issues on questions of fact without pleadings, with power to send them to inferior courts, the extended jurisdiction in interpleader cases, a prescribed time to reply, &c., to pleadings after defences, and joinder of all persons supposed to have right, as co-plaintiffs.

Upon the other hand, I see no reason why our provision as to waiver of temporary bars, and ascertainment of rent and mesne rate in ejectments, ought not to be extended to England.

I would venture to suggest, that witnesses whose means of life is their daily labour, and particularly working tradespeople, artisans, and labourers, should be indemnified against loss of time, and at the expense of the unsuccessful party. But as this right, if not vigilantly controlled, might lead to artifice and oppression, I would vest in the Judge an absolute discretion to make or refuse any allowance, as well as to fix its amount.

There is not at present any power to act on a Judge's fiat during court and office holidays, as no writ can be sued out on these days. I think this requires correction.

I would also beg leave to call attention to the scale of costs upon demands under £20. There is a vast amount of business done through the country on negotiable paper of shopkeepers for sums from £5 to £20, and for the most part held by Dublin or English merchants. Such holders cannot be reasonably expected to resort to Quarter Sessions, as the device of a notice requiring the personal attendance of the plaintiff at the peril of a dismiss for non-attendance, is well known. The costs now allowed on a summons and plaint on such securities are quite inadequate to indemnify the plaintiff, and in many cases not enough to defray costs of service; and their trifling amount acts as an inducement to defendants to delay and evade a settlement. To meet such cases I think there ought to be a graduated scale of costs adapted to £5, £10, £15, and £20 demands. This may seem a small matter, but it is very interesting to a large class of the trading community, and the subject of frequent complaint. It begets dissatisfaction amongst merchants, creates difficulty in the way of trade accommodation, and is, I think, worthy of consideration in furtherance of credit and security.

I offer no opinion as to how far the changes I have ventured to suggest, or any of them, would require the authority of the Legislature; but I think that whenever necessary it ought to be obtained.

All which I respectfully submit to Her Majesty's Commissioners.

(Signed), RICHARD ARMSTRONG.
31st December, 1862.

Rt. Hon. James Whiteside, Q.C., M.P.

4.—ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. Right Hon. JAMES WHITESIDE, Q.C., M.P.

I think I may assert that the working of the Common Law Procedure Act, if not all that could be wished, has to a large extent fulfilled its purpose of simplifying and amending the procedure as to process, practice, and pleading in the Common Law Courts—making them less dilatory and less expensive, and more conducive to the attainment of substantial justice between the parties.

Like every innovation on established usage, it probably has found few friends and very partial critics, among those who have been educated under a more artificial system—who have had much to unlearn as well as to learn. But be this as it may, with the public—that is the suitors, for whose advantage it was chiefly intended, it has had an unequivocal approval—an approval evidenced by the extraordinary increase of the number of suits and suitors in the Common Law Courts—an increase which has been, in less than ten years, more than threefold. This fact cannot be disputed, nor its significance denied.

In the year *before* the introduction of the Procedure Act, 1852, the number of declarations filed in the four terms of the year 1852, were	3,659
The number of plaints filed in the first three terms of 1862 were over . .	9,940
Which, when this current year shall have closed, will probably exceed . .	13,000

The question must be put and answered,—Why is this? I answer—Because justice has been made, to use a phrase of Lord Clanricarde, "cheap and easy." This has been effected, first, by a reform in the process—testified by the comparative decrease of the number of writs issued. Thus while the number of actual and individual suits instituted has increased threefold, the number of writs issued for the purpose of originating them has decreased in the same proportion.

In 1851, with one-third of the present actual suits, the writs issued were over	14,500
In 1860, they were but . . .	11,772
Which, but for the reform in the process, should have amounted to something like	45,000

Of which 30,000 would represent useless renewals and *alias* to wrong counties. A source of vast expense and delay to the suitors.

Again the simplification of the procedure is exemplified in the diminished number of the office rules :—

In 1851, the number of office rules entered were	19,666
Whereas in 1861, they were but . .	1,753
But for the reform in the procedure, they should have been about . . .	60,000

The striking facts last mentioned, representing a saving of time and money, of 58,000 rules, many of which were mere instruments of vexation and delay—such as Oyer, Particulars, &c., by which debtors were enabled to throw their creditors out of a trial, or the ascertainment of their rights, until probably their witnesses were dead or their debtors insolvent.

In another class of business, for example, the Court business of the Judges, in the hearing of demurrers and exceptions, and applications to change the venue, and for further particulars, the diminution has been probably to the extent of five-sixths of what it used to be; *i.e.*, it is now not one-half what it used to be, with one-third of the present number of suits.

These were the bye-battles, not of the suitors, but of the lawyers, and merely obstructed the trial of the real issue in the cause, and often rendered its results uncertain and as often worthless.

The number of new trial motions has also diminished in an extraordinary degree, and though I have no reliable figures to attest it, any practising barrister of experience will admit the fact to be as I have asserted.

Each party is fully apprized now of the real case which his adversary intends to rely upon, and applies his evidence to it, and is neither taken by surprise nor has any excuse for mistake.

The plaintiff, who has established his right by a verdict, is not delayed in his execution by a new trial motion about nothing.

In these important respects, I think it is undeniable that a vast reform has been effected in the process and practice.

And now, as to the pleadings, the object of the Procedure Act was to assimilate the system of pleading to that in England, without its multiplicity or its intricacy. The change has, I have no doubt, effected a vast saving in the matter of evidence and the proofs at the trial.

Everybody must see that the evidence is the most expensive part of the action at law, and in most cases constitutes probably three-fourths of the costs of the whole action. Any attempt to reduce the expenses of an action at law must, to be effectual, be directed to that part of the proceeding. The general issue puts the plaintiff on proof of everything, while it discloses nothing of the substantive defence intended, and necessitates the plaintiff to be prepared at all points. It might have been expected that the Bench and Bar would imitate the example set in England, and by a fair statement, and patient investigation of the facts of the case beforehand, settle the issues to be tried between the parties.

The complaint made against the working of the procedure is chiefly directed against the mode of settling the issues, and amounts to this—that it has been perverted to pettifogging and captious objections, to laying traps and snares for the unwary, and that the real issues are frequently passed by, whilst immaterial issues are selected. If this be so in some cases, it is manifestly from the want of care and diligence, candour, and proper spirit, on the part of those who so abuse a beneficial law, and from want of exercising a controlling power on the part of the Judges, to whom the duty has been assigned to regulate and control the evolution of the issues.

If the system, as devised by the Act, has in some cases been found defective (although the defect has been enormously exaggerated), the Act provided the amplest powers for the Judges, by general orders, to supply any defect, or correct any error in the practical working of this part of the statute. No attempt has been made, although it should have been made, if required. Some of the Judges have thought it was not inconsistent with their duty to criticise and disparage the law, making the results of their own want of co-operation a ground of complaint against the Act, whereas, if all the Judges had given the Act the same fair trial which two of the Chief Judges have done, it might have realized in this matter of the issues, as in others, all the expectations of Parliament in passing it.

I suppose no reasonable man can doubt that the present system of common law pleading, if not as perfect as might be, is an immeasurable improvement on the system of false, fictitious, technical, prolix, and insensible pleading which prevailed in Ireland previously. Those who can remember the time when the term business of the Courts chiefly consisted in hearing demurrers and motions in arrest of judgment, on technical points of no importance, or on the omission of words of no significance, which, however solemnly argued and listened to by men learned in law, appeared absurd and mischievous to all others of the community, must feel that it was a right and sound principle to establish, that the plaint should contain a true and succinct statement of the cause of action, in the common language of the people, and that no verbal or technical error or omission should invalidate it, so long as it had not a manifest tendency to mislead the opposite party.

There may be some few who are so insensible to the spirit of the age, so narrow-minded, or so prejudiced, as to imagine that such an abuse of learned craftsmen would be tolerated longer in times when the more inveterate abuses of Chancery and the Ecclesiastical Courts have been swept away by the wisdom of the Legislature, and there may be a very few quibblers and pedants who are so devoted to their smattering of legal gibberish, as to regard it as a personal grievance to abolish these forms, phrases, and technicalities, in which they delighted, and by which they profited. But it is impossible that the intelligent public or the Parliament will ever submit to the restoration of the absurdities of the old common law pleading. As to the forms of action, what were they but traps for the unwary? How could it conduce to any legitimate end of justice to observe the distinctions between trespass and case, debt and assumpsit? Is it for one moment supposed that Parliament would ever sanction the restoration of these legal subtleties? In England these forms are, to all intents and purposes, abolished; they exist but in name. They can never be mentioned for any other purpose than to be disregarded. They are mere shadows preserved to satisfy the religious reverence of some ancient pleaders, who could not be reconciled to their annihilation. I was informed that some of the most enlightened members of the Common Law Commission in England were in favour of the complete abolition of these useless distinctions.

Then as to the pleadings being confined to plaint and defence, instead of alternating into replications, rejoinders, &c., it is in conformity with not only the practice of the County Courts but the practice of the Equity Courts, where the replication did nothing more than put the case at issue. The English system of pleading is a peculiarity of English jurisprudence. It was, no doubt, an ingeniously arranged but most highly artificial mode of evolving a single and certain issue, but the good sense of mankind has declared that it cost infinitely more than it was worth. All parties seem to be agreed that it is prudent to submit to the consideration of the jury a question as intelligible and distinct as possible; the nature of the tribunal requires this. The enormous cost of witnesses to prove matters not really denied, or denied only for the purpose of embarrassing the adversary, requires that there shall be some means of narrowing and defining the question for the consideration of the jury. Now there are only two conceivable modes of doing this—either by special pleading with all its special demurrers, on which the Court must inexorably pronounce judgment against all variations from established form, however technical, or verbal, or trifling; or by accord of the parties or their counsel controlled by an appeal to a Judge presumed to be capable, experienced, watchful, and industrious.

This discretion is, no doubt, not well exercised, when instead of one or two, twenty issues are submitted to bewilder a jury. But this is not, I assert emphatically, the fault of the Act, but of those who abuse, or of those who refuse properly to work it.

COMMON LAW.

Answers as to Practice and Procedure.

Rt. Hon. James Whiteside, Q.C., M.P.

Again, if issues are framed to ensnare the opposite party, this is no fault of the Act; nor again, is it the fault of the Act if a multiplicity of counts and defences are suffered to load the files, which is against the very object of the Act.

The Act peremptorily requires that the plaint and defence shall contain true statements of the case of each party; and with ample powers of amendment (which I regret to say have been sometimes exercised in the narrowest and most illiberal manner) it was to be expected that the Judges would have set their faces steadily against a multiplication of counts and defences inconsistent with each other, and some of them necessarily false. If they have not done so, the blame must not be imputed to the law.

Then, as regards the general issue, even in England it has long since lost its original character of an universal traverse, and of an argumentative traverse, under which substantive affirmative defences might be relied upon. It has now a definite signification, and is applicable only to one or two particular defences.

2. I would suggest no other change in the present system of pleading in Ireland than a more strict adherence on the part of the Judges to the requirements of the Act, namely, in having single statements of the cause of action and of the defence; in having single issues, if possible, and when this is not practicable, to allow an enlarged issue, as to the truth of the justification or other defence.

To alter a system which, in the main, affords justice to the suitor cheaply and quickly, because of partial inconveniences (as the settling of the issue, the remedy for which is in the power of the Judges, if they have the energy to use it), appears to me to be unwise and inexpedient.

I have no hesitation in asserting, that if the pleadings in the cases which go to trial, and wherein alone issues are required to be settled, were submitted by order to a puisne Judge of each Court a few days before the trial, and were by him carefully considered, and subjected to discussion before him in chamber, in the few instances wherein he might require the aid of counsel, all difficulty in the settling of the issue would vanish. Where issues are so settled, no difficulty arises at the trial or afterwards, and if it was once understood by the practitioners that the Judges were all as resolved to get at the true point as the Chief Justice of the Common Pleas is in settling issues to be tried before himself, the litigation, or rather squabbles respecting the issues would cease, and the real question would be placed directly before the jury.

The puisne Judges in Ireland have ample time on their hands to undertake this duty, and they would be usefully employed in facilitating justice. The labour of the English puisne Judges in chamber in settling pleadings is enormous. It necessarily must be so, as special demurrers are abolished; this labour is quietly performed while the Judge and the counsel are seated around a table, having one object to attain, viz., putting the question properly on the pleadings for trial. If the example set by the English Judges be steadily followed in chamber here, all complaints as to the working of the Act in the settlement of pleadings and of issues will cease.

I admit the Procedure Act contemplated the active co-operation of the Bench in its working; if it receive that earnest assistance it will operate successfully. The law which received the written approval of the late Barons Pennefather and Greene, and of many eminent men in England, ought not to be lightly or rashly changed.

3. As to the practice, it may be considered under three heads—1st, the process; 2nd, as to venue; 3rd, execution.

1st. As regards the expediency of the consolidation of the writ and declaration, it can hardly be denied, that if considerations of expense and delay did not interfere, it would be more convenient, and calculated to lead to an early settlement, that the document served, while it invited the debtor to appear in Court, should also apprize him of the true nature of the complaint he is called upon to answer. It is the practice of the County Courts in England and Ireland, and of the Court of Chancery, to do so, and it is reasonable that it should be so, and *primâ facie* it would appear to be less expensive to give the information in one document than in two. But, then, it is said that some of the writs are settled immediately, and the insertion of the information in such cases is premature, unnecessary, and an useless expense.

To judge rightly of this question of expense, we should consider, first, what expense does it superadd to those cases that are settled; secondly, what expense does it save in those cases not settled; and lastly, what proportion do the one class of cases bear to the other. Now, I find that in the year 1860 (the only year of which any authorized statement of the number of writs issued exists), the total number of summons and plaints issued was 11,772. Of these there were settled before plaint filed 3,139, less than one-third, and there were 8,633 cases in which the summons and plaint was filed and answered the secondary purpose of a declaration.

Now, even if we could or should assume that in the 3,139 plaints settled before declaration, the additional information required by the Procedure Act was useless, and in no ways conduced towards a settlement of these cases, all of which I deny, what was the extra expense incurred? In, probably, 70 cases out of the 100 they are prepared by the attorney or his clerk; they state in the body what should be otherwise endorsed on the back, and the total expense is far less than that of the old writ. Any of these cases might have been settled within six days after service, by a payment of a sum of £2 10*s.* for costs, no matter how large the amount claimed or paid; for £1 5*s.*, if settled by a payment under £20, and up to £5; and for 12*s.* 6*d.*, if settled for less than £5. Compare this with the costs of an ordinary writ served in England and settled before declaration, and if the comparison be unfavourable to the summons and plaint, it will afford an argument to a certain extent against the expediency of the change made in our procedure; but not a complete argument, until we consider the second branch of the question, *i.e.*, the saving on the cases not settled by the mere service of the writ. These in Ireland were in 1860, 8,633 cases, or more than two-thirds of the entire amount. In all these the change has effected a very considerable saving of expense, and of what is still more valuable, time.

Before any absolute assimilation of practice in this respect with England is proposed for the consideration of Parliament, we should consider not only the comparative smallness of the amounts sought to be recovered in Ireland as regards those generally dealt with at Westminster, but also the peculiar habits of the people. In England it may be that the service of the writ will lead to a settlement in two cases out of three. In Ireland it appears to have that result only in one case out of three; and, therefore, whilst the balance of economy and convenience might, in England, be against the consolidation of writ and declaration in the ratio of two to one, it would be exactly the converse in Ireland.

I believe there was a great difference of opinion in England upon the expediency of combining the writ and declaration, many eminent lawyers approved of the consolidation as effected by the Act in Ireland.

2nd. I shall also mention another change in practice sometimes complained of, chiefly, I believe, by young and inexperienced professional men. No person can doubt that, *cæteris paribus*, a record will be tried more satisfactorily in Dublin by a city jury, assisted by a central bar, than on circuit, in the hurry and scramble of an assizes. The old rule as to venue in transitory actions was utterly uncertain. The plaintiff laid his venue where he pleased, the defendant uniformly changed it on an affidavit that the cause of action arose in some other county, a statement, which in a transitory action, was in nine cases out of ten an impalpable fiction; and then the plaintiff in almost every case moved to restore or retain his venue on special grounds of convenience or on conflicting affidavits as to residence of witnesses.

Some classes, *e.g.*, attorneys, had peculiar privileges as to venue denied to other persons. Now, nothing finally controls the venue, but the relative convenience

of the place for trial, and where no reasons can be offered to turn the balance, the suitor naturally has the choice. Thus a multiplicity of idle motions, sustained by hard swearing and at a great expense, are cut short, and as a general rule, the important records are tried at Dublin, where for obvious reasons the suitor prefers to have his case tried. He escapes the hurry and confusion of an assizes, the time of despatching the reduced business at these assizes being frequently inconveniently short.

Lastly, as to the immediate execution following the verdict, without the delay of a rule on the postea, awaiting the following term, it has had a most beneficial effect in putting an end to captious exceptions and objections intended merely for delay, and to baffle the suitor in the enjoyment of the fruits of his verdict. In no proper case of reasonable doubt will a judge refuse to stay execution, but it is a mercy to the creditor, and to the debtor himself to save him from the crotchets and points of his counsel, which may arise sometimes from vexation at defeat, from perseverance, or from professional peculiarity.

I have thus answered, according to my convictions, the questions proposed to me, and have only in conclusion to express my hope, that if changes in our process, practice, and pleading be recommended and adopted, they may tend to cheapen, simplify, and quicken the administration of justice.

(Signed), JAMES WHITESIDE.

Mountjoy-square,
December 1st, 1862.

P.S.—I desire to add a statement of the fact—that the number of posteas has diminished considerably; whereas in proportion to the number of writs issued they might have been expected to have greatly increased. I ascribe the result to the simplification of the procedure, and to the consequence that only cases involving a question fit to be tried are brought to trial. I also wish to state that I have watched the operation of the issues during the whole of a very heavy after-sittings, and I do not believe a single question has arisen in any case upon their construction or effect; and I do not believe a single question arose upon the issues in any case tried in the Consolidated Nisi Prius Court during the entire of last term.

J. W.

December 17th, 1862.

5.—ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. GEORGE BATTERSBY, Esq., LL.D., Q.C.

That part of the present system which requires an application to the Court for liberty to plead several matters of defence, and to settle issues, is inconvenient, expensive, and injurious to the suitors. In a difficult case, the attorney can seldom obtain accurate information from his client in time, so as to be able to have pleadings carefully prepared, an affidavit to verify, and then a motion to the Court. A Judge is not always to be found to whom application can be made. Such applications are usually heard as motions of course by a single Judge. Very few of the Irish Judges have had any experience in special pleading, and they usually dispose hastily, and without consideration, or any fixed rule or principle, of pleadings requiring the greatest care and consideration, and they not unfrequently involve suitors in embarrassment, and deprive them of their rights; indeed it would be difficult to say what, if any, is the present "system of pleading" in Ireland. The working of the present practice was well exemplified by a case brought down for trial on my last circuit. The pleadings had been settled by the Court, and ten issues directed. On hearing the opening of plaintiff's counsel, the Lord Chief Justice stated that he could not, and would not, attempt to try the case stated upon the record as it stood; and thereupon, with his permission, the counsel at both sides agreed to amend the pleadings by altering the plaint, and pleading two new defences and adding two new issues, and upon those new pleadings the trial proceeded. And a verdict found for the defendant was afterwards set aside, on an affidavit of the plaintiff deposing that the amendments took him by *surprise*. The case is to be tried again at the next Assizes.

I suggest:—

That, as to the general issue, the English practice should be adopted in Ireland; see Messrs. Jellett and Holland's Report, p. 7.

That the parties should be allowed, as formerly, to declare and plead on the certificate of counsel, with liberty for the Court to strike out, on motion, all prolix, impertinent, and illusory pleadings.

That the rule of the Ecclesiastical Courts should be adopted, which requires a party objecting to a pleading to serve notice on his adversary, specially pointing out the objection, and requiring him to amend, on payment of the costs of the notice and amendment. This would prevent a practice which now prevails, of moving on notice, without any object but the creation of costs, to strike out or amend pleadings as "embarrassing." No two judges agree in the meaning of this last word; consequently, the party moving has a good *chance* of costs on the motion, or if he fail in getting them, they are generally made costs in the cause, and then he has another *chance*.

That, as to the venue, the English practice, page 6 of Messrs. Jellett and Holland's Report, should be adopted. Nothing can compensate for the writ of view or knowledge of the *locus in quo* by a jury. In a case in which I was, the venue being laid in Dublin, and the subject of action lying in Kildare, the Court refused, on motion, to change the venue, on the ground that the plaintiff had a right to lay it where he pleased, and that the trial ought not to be delayed until the following assizes; but they were so well satisfied of the necessity for a view, that they ordered the Sheriff of Dublin to bring jurors from thence to Kildare to view. The consequence was, that as the jurors could not be compelled to attend, an excuse for soliciting them was thereby afforded to the parties, who immediately commenced an active and most objectionable canvass amongst their friends.

That payment of money into Court, *ibid*, p. 8, should be allowed in every action. If the prevention of expense, angry feelings, and prolonged litigation be the object, the actions at present excluded are those in which it should be most readily allowed.

That as to joinder of issue, *ibid*, p. 9 and 12, the English practice should be adopted in Ireland.

That every party should be entitled to a special jury, *ibid*, p. 14, as at present in London and Westminster. At present, in Dublin, the same, or nearly the same individuals, being those of the panel to whom a guinea is an object, try all, or nearly all the special cases in each court. In the country the same persons are usually summoned on the special and common panels. It seldom happens in Ireland, where religious and political feelings influence persons in every relation of life, that there are not individuals on the panel whose prejudices are the subject of apprehension to one or other of the parties; and the old law, which allowed the removal of such, although no cause of challenge could be assigned, was most satisfactory, and caused no inconvenience to the jurors, who must attend the assizes for other purposes. Besides, if the Sheriff have any partiality (not an uncommon occurrence), he can more easily exercise it under the present than the old law.

(Signed), GEORGE BATTERSBY.

10th July, 1862.

COMMON LAW.

Answers as to Practice and Procedure.

R. J. Lane, Esq., Q.C.

6.—ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. RICHARD J. LANE, ESQ., Q.C.

1. As far as I have had experience of the present system of law pleading, it has produced uncertainty and created difficulty in the conduct of a case which did not exist under the former system, and has not worked well.

2. A considerable part of the disadvantage of the present system results, I think, from obliging a defendant to traverse *separately* every averment in the summons and plaint, or other pleading. By this, the length of the pleadings, the expense of them, and the costs of the action are increased; and I would suggest the restoration of general issues—that a party should be *obliged* to plead specially in confession and avoidance only—but *permitted*, at the peril of costs, to plead separately any pleas he pleases. I would not confine this permission to pleas in the strict sense of that word. Considering the uncertainty of results in pleading, I think it a hardship to prevent a party from relying upon separate defences, *solely* because they are inconsistent; and that rule has been more stringently enforced under the present system than formerly, and without much uniformity. The tendency of feeling in favour of a general system of pleading under the present system has, I think, been practically shown by the introduction under the present system of an issue, now very common, but apparently contrary to the spirit, if not to the letter, of the Law Procedure Act, viz., "whether a plea, replication, &c., &c., is true in substance and in fact." This is in reality a general issue upon the plea, replication, &c. When general issues were allowed, I almost always found that the adversary's case was stated in my brief or in the case for proofs; and I cannot call to my recollection a single case in which a verdict was set aside *solely* on the ground of surprise as to the defence. I also think that the total abolition of regard to the form of action under the present system is disadvantageous. I have seen great confusion arise at the trial from the joining of actions of tort and contract together; and I would suggest the restoration of the old rule of keeping actions of tort and contract separated, although I see no objection to the joinder of actions in special and simple contracts.

3. The system of issues has, in my opinion, worked badly at trials. It has multiplied and confused the questions for trial to such an extent that in any complicated case the jury is quite puzzled, and the findings are in fact settled by the Judge or counsel. The obligation of the jury to find upon every issue adds to their embarrassment; and I have known a jury to be discharged in consequence of their not agreeing upon all the issues, when it appeared afterwards that those upon which they had agreed would have decided the case. I think if the issue system remains, the Judge ought to have the power of taking the findings upon any issues on which the jury agree, and then, either of directing them or of leaving the Court above to deal with the verdict as it thinks right. I think the system of a Judge deciding what issues parties are to try is very objectionable, and, according to my experience, has not worked well. The parties and their counsel must know better than a Judge can learn at a brief hearing, what questions they have to try; and I think justice was administered more effectually when, as under the former system, parties were allowed, at the risk of costs, to try any questions they pleased, than it has been under the issue system. The meaning of the issues is often a subject of doubt and discussion at the trial; and in settling them, the object of each party is to get such issues only, and so worded, as will best answer his own purpose. In connexion with this, a power is given to the Judge, at the trial, to alter the issues and add new issues. This power is not exercised with any degree of uniformity, being exercised to a much greater extent by some Judges than by others. If used to any great extent, I think it is calculated to be prejudicial to parties. If parties are allowed to raise their own issues there would be no occasion for it, although, as an appendage to a system in which the issues are settled by a Judge, an amendment is, perhaps, to some extent necessary.

4. I suggest the abolition of the issue system, and of the settling of issues by the Judges, the allowing parties by pleadings as concise as possible to raise the questions to be tried, and the doing away with the power of the Judge to amend at the trial, except in formal matters.

5, 6, 7, 8. In addition to what I have said in answering the previous questions, I have only to add, that I consider a short-hand writer would be a most useful appendage to every Nisi Prius trial; and I would make his report, verified, if necessary, the basis of all subsequent proceedings. By this means the Court of Appeal would have the case before it precisely in the same way as the Court below had, and a short-hand report is the only way in which this can be accomplished. It would then be necessary for the Judge only to make any remark upon the case or evidence which he may think necessary.

9. There are only two of the above matters, of which I can specify instances within my own knowledge, to illustrate my views. The first relates to the issue system. In a case, at the trial of which I was engaged some years since, upon the settlement of issues before a Judge, now deceased, an issue tendered by the plaintiff was struck out by the Judge. The case was afterwards tried *before the same Judge*, who, before the case was nearly over, saw, as did every one concerned in it, that the issues upon the record would not try the question between the parties; and the Judge having forgotten what had occurred at the settling of the issues, stated, as the issue which would try the question, the one which he had struck out. The issue paper, altered in his own handwriting, was then produced to him, and application was made to him to add that issue. It was not even alleged that it would require any additional evidence or change in the trial; yet he refused the application, reserving liberty to the plaintiff to apply to the Court above to add it if he was wrong. A new trial was moved for, upon that among other grounds; and the Court above, as the Judge below admitting that the real question had not been tried, refused the application, saying that the plaintiff ought to have appealed from the Judge's ruling upon the settling of the issues, and that amending or adding issues were matters entirely in the discretion of the Judge below, with which they could not interfere. The action was one of trespass to real property, and plaintiff's rights were thus, by the settling of the issues, concluded, without being tried.

The second instance has reference to the appointment of a short-hand writer. A case had been tried for damages done to plaintiff's cattle by the grounding of a steamer in a river. It was sent for trial a second time, the exact place in which the vessel grounded, and the cause of it not having been satisfactorily shown at the first trial. The crew of the vessel was, of course, hostile to plaintiff, but the mate was not (I think) examined by the defendants on the first trial. He was on the second. There was no doubt he could tell the whole case, and from circumstances, he was the only person who could. In the course of his cross-examination, the map of the river was put into his hand, and he pointed out clearly and truthfully the different points at which each matter occurred, and amongst the rest, *by letter*, as the place at which the vessel struck, a place different from what the other witnesses *stated* it to be. Perceiving the Judge was not taking down what he said, counsel called his lordship's attention to the answer, and requested him to take it down. The Judge (since deceased) at first said he had it down already several times; but upon being assured by counsel that he had not, and being pressed to take it down, he said, "Very well, it is at letter C on the map;" and the trial proceeded. The verdict being for the defendants, and a conditional order for a new trial obtained, the Judge's report was sent in, and the report of the above transaction was merely in the words, "Witness is called upon to point out the place, and points out *the wrong place*." The motion having been moved upon the report by counsel who were not at the trial, the new

trial was refused; and the plaintiff lost the case, which, I believe, he would have gained had there been a short-hand authenticated report of the trial. This is, I admit, but a solitary case, occurring, I believe, inadvertently; yet, I think, quite sufficient to warrant the suggestion which I have made.

In another case, with the same Judge, he sent in his report without the objections which I had handed in in court, and upon the first hearing of the case, in the court above, the court was about to refuse the new trial, but allowed the case to stand over at my request. Having spoken to the Judge upon the subject, he, at the end of about a week, sent in my objections, which he had mislaid and altogether forgot; and upon this my client got a new trial, which he would certainly have been refused if the Judge had not found them.

I shall only add, that I consider nothing more prejudicial to this country than having our systems of pleading and practice different from those in England; and I would therefore respectfully, but earnestly, urge the Commissioners to assimilate the pleadings and practice of the two countries.

(Signed), RICHARD J. LANE.

August 11th, 1862.

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7. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. J. HASTINGS OTWAY, Esq., Q.C.

I ceased to have experience of pleading and practice at common law before the Common Law Procedure Acts came into operation, and therefore do not feel myself competent, from my own knowledge, to answer in detail the queries which have been submitted to me. But I take leave to say, that, judging from my acquaintance of the former system of pleading, both as a practitioner and a teacher, I am of opinion that the best way of eliminating the real questions of law and fact between litigating parties is by PLEADING; and that the old method, if purged from special demurrers, and some subtleties which became encrusted on it, was well adapted for that purpose. At the same time, I think that the reforms, or rather radical changes, introduced by the Common Law Procedure Acts, did not deserve, as far as I can judge (especially as to the framing of issues), the reproach I have heard cast upon them.

As the commission which her Majesty was graciously pleased to issue was granted with a view to the assimilation of the law in England and Ireland, I would respectfully say that such an object can be best effected as to pleading, by adopting in Ireland the present English system. It approaches nearer to what I have already said was the best mode for arriving at the questions of law and fact, which were to determine a litigation. It has been to some degree matured by time and judicial decisions; and I think it would be preferable to establish it in its entirety in Ireland than to form out of the two existing systems, English and Irish, a combination of what might be considered good in, and peculiar to, each.

What I have said as to pleading, I consider applicable to the practice or procedure at common law.

In conclusion, I would observe, that there is nothing so important, in my judgment, for the best interests of Ireland (socially considered), as that the same laws should exist for both countries; that, as the common law is the same in both, the statute law should be *made* the same; that there should be in future no separate legislation, and that all our institutions should be as far as possible identical. Furthermore, I take leave to add, that I consider it would be highly beneficial to the administration of the law if there was an interchange of English and Irish judges. I do not mean as to sittings in banco, but in the commissions for the assizes; and I believe there would be no practical difficulty in carrying out this suggestion, which is not made now for the first time. I have heard that it was a favourite idea of a very great statesman now deceased.

(Signed), J. HASTINGS OTWAY.

22nd December, 1862.

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8. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. SIR COLMAN M. O'LOGHLEN, Bart., Q.C.

1. The existing system of Common Law pleading in Ireland does not, in my opinion, work well; and I consider it calculated seriously to embarrass parties in the assertion of their rights, and to be attended with unnecessary prolixity and expense. The part I most object to is the present system of defences and the necessity which exists in every serious case of filing a number of pleas, and raising a multiplicity of issues which, at the last moment, are by consent, in most cases, abandoned. The abstract of issues, too, at present required is converted into an abuse. In every Nisi Prius brief all the pleadings are first copied, and then the same identical matter is copied over again under the name of "abstract of issues."

I would suggest that the present system of defences and of settling issues should be abolished, and "the general issue" should be restored, as of old, both in actions of tort and in actions founded on contract. I would even go further and suggest that no plea should be allowed but "the general issue." I am opposed to all special pleas. If it be considered that "the general issue" is too general and too harassing to a plaintiff, (an opinion in which, however, I do not agree), I would suggest, that with "the general issue," the defendant should be bound to serve "a bill of particulars" of the defences he means to rely upon under "the general issue." If this bill of particulars was too general, the Court should have power to order it to be amended; and at the trial, unless by leave of the Court, or such terms as the Judge at the trial should think proper to impose, the defendant should not be at liberty to rely on any defence not stated in his bill of particulars.

The grounds of defence could be shortly and concisely stated in the bill of particulars, such as "the Statute of Limitations," "the Statute of Frauds," "leave and licence," "privileged communication," "infancy," &c., &c.; and by such a course as this the absurd technicalities which now surround special pleading would be done away with, and the policy enunciated by the Legislature when they abolished special demurrers would be more fully carried out.

If this change be considered too radical, and special pleas be still retained, I would suggest that the defendant should be at liberty to plead as many as he thinks proper without leave of the Court, and without an affidavit. The present system of getting leave to plead several matters is only productive of expense and embarrassment. Judges entertain such different ideas of what pleas ought to be allowed that it is now a pure matter of chance what pleas a defendant will be allowed to plead, dependent on the caprice of the Judge who hears the motion. Parties who know their own case and rights ought to be allowed to plead whatever defences they think necessary, and the peril of costs is a sufficient protection against abuse. Requiring affidavits to verify is also a most vexatious proceeding. In practice it is often impossible to procure them from defendants residing in the country, as counsel's direction and advice cannot be had until the last moment; and the system substantially affords no protection to plain-

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tiffs, as in most cases affidavits to verify will be made, as a matter of course, when the pleas are endorsed by counsel. There is no reason why defendants should be obliged to make affidavits when plaintiffs are not; and multiplicity of affidavits ought, in my opinion, to be discouraged, as tending to render persons careless about the taking of an oath.

II. The present system of Common Law Practice, in my opinion, works well, except that portion of the practice connected with pleading; but in some matters it is open to improvement.

As improvements on the present system I would suggest that the restriction as to lodging money in court in certain actions should be abolished, and that the defendant should be at liberty to lodge money in every action. I would also suggest that the exceptions which now exist as to the examination of parties should be done away with, and that in every action the plaintiff and defendant should be competent witnesses. I would also suggest that the absurdity and hardship of allowing defendants in ejectment on the title to set up outstanding legal estates, should be abolished; and that the right of a party shall not be defeated by proof merely that the legal estate in the land is vested in some other person not a party to the action, provided that the party who sues was, at the time of the institution of the suit, the person substantially and beneficially entitled to the land.

I consider the present system of allowing plaintiffs to choose their venues requires amendment. Too great facility is given to plaintiffs to oppress, and I fear this facility is often taken advantage of, and venues are laid in Dublin oftentimes for the purpose of extorting a settlement. I consider, too, that the Court should have power to compel plaintiffs to give security for costs in frivolous and oppressive proceedings; and above all, and before all, I would suggest that some system be observed of remunerating attorneys for their professional services different from the present, in which their duty to their client and their duty to themselves is directly in opposition. A system of fixed fees for each class of cases, in place of remuneration dependent on "attendances," and "notices," and "letters," and "scrivenery profits," with liberty to charge in addition costs actually out of pocket, would, in my opinion, go far to remedy the crying abuses of the present system—a system which deters prudent parties from asserting their rights, and oftentimes gives rise to frivolous and vexatious actions.

In addition to the above matters I would suggest that the circuits should be put on a better system than that which at present exists, and that some system of rotation among the Judges should be adopted (such as exists at the Commission in Dublin) by which each circuit in its turn would have the benefit of the assistance and guidance of all the Judges in rotation.

In conclusion, I have only to say that I hope the attention of Her Majesty's Commissioners shall be extended to the Crown side of the Queen's Bench* and the Petty-bag side of Chancery, and that a similar system of pleading and practice shall be adopted in both these Courts as in other Courts of Law. I do not see why the Exchequer and Common Pleas should not have jurisdiction in Quo warranto and Mandamus cases as well as the Queen's Bench; and I would suggest that jurisdiction in these cases should be conferred on them.

(Signed), COLMAN M. O'LOGHLEN.

5th Sept., 1862.

John Thomas Ball, Esq., LL.D., Q.C.

9.—ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. JOHN THOMAS BALL, ESQ., LL.D., Q.C.

In reply to the questions proposed by Her Majesty's Commissioners respecting Common Law Practice and Procedure, I have to express my opinion that uniformity of practice and procedure in the English and Irish legal tribunals is attended with such advantages, that to the attainment of this object all minor details should give way.

For this reason, even if the Irish system had been superior, I yet should have been favourable to the adoption of the English; but so far as I have had opportunity to compare the two systems, I consider that the English ought to be preferred. My experience has been, that a loose and uncertain mode of pleading prevails under the Irish system; that in actions of tort, the want of the general issue, or some equivalent plea, entails such difficulties upon the pleader as impede the proper defence of his client; that the ascertainment of the issues to be tried, before the evidence has been heard, embarrasses both Judge and jury in the discharge of their duties at the trial; and that the abolition of local venues, and permission to plaintiffs, by choosing their own place of trial, to withdraw the case from the neighbourhood where the character of the parties and their witnesses is known, has tended to increase expense, encourage speculative actions, and make the result uncertain.

(Signed), JOHN T. BALL.

1st August, 1862.

Hedges Eyre Chatterton, Esq., Q.C.

10.—ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. HEDGES EYRE CHATTERTON, ESQ., Q.C.

1. In my opinion, the present system of Common Law pleading in Ireland has not worked satisfactorily. I think that the entire abolition of the general issue, the necessity of pleading all defences specially, the restriction upon replications and subsequent pleadings, and above all, the system of having issues settled before the trial, have operated very injuriously. A looseness of pleading prevails, which frequently renders it difficult, if not impossible, to ascertain what the case really intended is. It has been my experience, and I believe that of most other members of my profession, who had much practice in the former system of pleading, that a plaintiff was hardly ever taken by surprise as to his opponent's defence under the general issue. The abolition of that plea has tended to prolixity in defences, which now, in many cases, are rather statements of the defendant's case than pleadings. This, and the want of subsequent pleadings to narrow the questions to be tried, have produced increased expense, and involved juries and even judges in difficulty and embarrassment as to the questions really to be tried. It is the practice to tender issues upon all the allegations in the defences, and to save the enormous multiplication of the issues, a device was adopted of tendering an issue upon every defence of the least complexity, "whether the defence is true in substance?" This puts the whole of that defence in issue, and is in fact a general traverse of every material allegation. Still the number of issues settled upon the record as those to be submitted to the jury is very great. I have myself known over twenty issues, and have heard of still greater numbers. Far the greater number of them in general prove unnecessary, and only serve to perplex juries. They are settled before trial by a Judge who has heard nothing of the facts of the case, and whose duty is merely to see that they are raised by the pleadings.

There are also many minor objections to the present mode of pleading, such as the abolition of avowries and cognizances in replevin, which I do not think it necessary to refer to in detail.

To the second query.—I strongly recommend the adoption of the English system. Even if there be defects in it, it is better to have the same system in both countries. A qualified use of the general issue, and in other cases, subsequent pleadings, under proper restric-

* For further answers as to Practice on Crown side of Queen's Bench, see Appendix A., p. 152.

tions, in order to evolve by pleading the questions really in dispute, and the abolition of settling issues upon the record before trial, would, in my opinion, be very advantageous.

To the third query.—This query is so very general in its terms that I cannot give any satisfactory answer to it. I think the practice, on the whole, works well.

To the fourth query.—I should advise the Irish practice to be assimilated as far as possible to the English, except, perhaps, in ejectment, as to which, at present, it would be inexpedient to make any change. It would be, I think, an improvement to have the writ separate from the plaint or declaration, and to give the power of endorsing it specially as in England. I strongly recommend the distinction between local and transitory actions to be restored. There are many advantages connected with local trials, where the parties and their witnesses are known, and where the premises in suitable cases can be viewed by the jury. I also recommend the striking of special juries under the old system, especially in Dublin, and in counties that have large special jury panels. It gives a more satisfactory jury, and if properly worked, would be a great relief to special jurors. I think the subject of increasing the payments to common jurors is worthy of consideration.

It would be very desirable that a Judge should sit every day during term, to hear and dispose of all practice motions from all the courts, with power to order any such motion to be moved in the full court. A Judge ought to sit every day, for motions, between the end of term and the going out of the circuits. An arrangement of the circuits could be easily made that would enable one Judge to dispose of all business on one circuit, and leave one Judge in town to transact chamber business.

To the sixth query.—I have already stated, so far as time permits me, the matters that have occurred to me on this subject.

To the fifth and seventh queries.—I am not competent to answer these queries.

To the eighth query.—I have already stated what has occurred to me on this subject.

To the ninth query.—Time does not permit my specifying instances.

(Signed), HEDGES EYRE CHATTERTON.

8th August, 1862.

11.—ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. SAMUEL FERGUSON, Esq., Q.C.

1. The result of my experience and my opinion of the working of the present system of Common Law Pleading in Ireland is, that it works well.

3. The result of my experience and my opinion of the working of the present system of Common Law Practice in Ireland is, that it works well.

4. As to the changes in the present system of Practice in the Common Law Courts in Ireland, I would suggest that some tribunal appears to be wanting to adjust differences of practice as they arise.

8. Considering the importance of uniformity of practice and procedure, and the expediency of being prepared for reciprocal rights of practice, I think it would be advantageous to extend to Ireland the whole of the law and practice of the superior Courts of Common Law peculiar to England.

(Signed), SAMUEL FERGUSON.

12th Nov., 1862.

12.—ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. CHARLES R. BARRY, Esq., Q.C.

I regret that the period limited for answering the questions of the Commissioners has been by accident (so far as I am personally concerned) so inopportune as to prevent my considering and replying to the queries as fully as I should have desired.

1. The result of my experience and my opinion of the working of the present system is, that I consider the Common Law Pleading in Ireland to be loose, prolix, and inaccurate. This state of things is commonly attributed to the Procedure Act of 1853, as the inevitable consequence of its language and provisions. I think this charge is (to say the least), in a great degree, unfounded, and that the Irish statute was in itself susceptible of an operation far different from the mischiefs by which it has unquestionably been attended. Previous to the passing of that Act, the system of Common Law pleading in Ireland was similar to that which prevailed in England prior to the new rules of 1832, namely, that (by many much lauded, but in my opinion, most irrational) system which permitted a defendant, in the actions of most frequent occurrence, by pleading the general issue, to put the plaintiff to establish in proof all the material averments of his declaration, although, as to many of them (the proving of which might entail enormous expense), there would not exist the remotest controversy, while, if the plaintiff was lucky enough to escape all the chances of a non-suit, the defendant might then, under the same form of plea, set up any species of defence or number of defences, either by way of traverse, or confession and avoidance. From this state of things in England, the profession were led by the rules of 1832 into that reign of terror of special demurrers, which, for twenty years rendered the administration of the Common Law in England at the same time horrible and ridiculous. This system, however, was not without its good effects, for when the new procedure of 1852 came to emancipate suitors from the disasters, and the profession from the disgrace, of the "new rules" of 1832, it found the profession in England highly trained under the lash of the special demurrer, in the art of spreading defences on the record with accuracy and precision; and the Act of 1852 preserved sufficient of the previous system to take advantage of that training, while it abolished all the vexatious subtleties and preposterous crotchets by which that system was rendered odious. The course of events in Ireland was different. In 1853, the defendant's pleader was, for the first time, driven from the sinecure of the omnipotent general issue, and required to state his grounds of defence on the face of the record; but he was at the same time delivered from all fear of a special demurrer. During the progress through Parliament of the Act, and on its first coming into operation, the most singular notions prevailed. There was to be an end of all rule and regulation. Young men just arrived from London, after a pupilage in a pleader's chambers, were jeered by their companions for their loss of time and money. Men of standing, who had acquired a reputation for their knowledge of special pleading (so far as it was practised) were regarded as men whose occupation was gone, whose career was ended. A highly respectable Judge (now no more) by his language from the Bench, much encouraged these ideas. It was forgotten that many of the rules of pleading (when divested of the abuses which grew around them) are not artificial rules of technical origin, but (so to say) natural laws of accurate language and precise allegation, and that a man can no more state a plaintiff's or defendant's case with accuracy and precision without (though unintentionally) obeying some of the rules of pleading, than he can argue soundly without an observance (however unintentional) of the rules of logic. The phrase common at the time was, "anything will do now," and the upshot is, that we have drifted into

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the present most unsatisfactory condition of affairs, notwithstanding exertions undoubtedly made both on the Bench and at the Bar to arrest the progress of the mischief.

The total abolition of the general issue, taken in combination with the language of the 56th section of the Irish Act of 1853 (as at first, and perhaps rightly interpreted), has been a fruitful source of prolixity, with all its attendant embarrassments. I have frequently observed in practice that no defences are more difficult to frame, and run to greater length, than some of the defences which, in England, would amount to, or be admissible under the general issue. A frequent instance of this is the defence of "privileged communication" in actions of libel or slander. It was early decided that this defence must, under the Act of 1853, state in detail all the facts and circumstances which constitute the communication a privileged one; and this doctrine has been pushed, in some cases within my experience, to a very extreme length, and the result has been excessive difficulty and prolixity. Now, in England this defence is admissible under the general issue; and so far, the vice of prolixity and the other difficulties are avoided. But, I think the English system is objectionable. In the first place, every record should, in my opinion, be (as far as possible) so framed that any man acquainted with the language should be able, on reading it, to understand the complaint of the one party and the answer of the other; and the general issue obviously conveys no suggestion of a defence of privilege to any man but a lawyer. But, secondly, and what is more important, under the general issue, the defendant may also rely on other, and (in fact, though not technically) inconsistent defences; as, for instance, that he never published the libel or spoke the words, or that it or they did not apply to the plaintiff; or that the publication was not a libel, or that the words were not used in the defamatory sense, &c. I am of opinion that a plaintiff should not by one general form of plea be involved in the expense and trouble of the proofs necessary to meet all these lines of defence. I think a far preferable course would be to adopt a short form of plea, such as "The defendant says that he spoke the words *bona fide*, believing them to be true, without malice, and under circumstances of privilege, on the occasion of his giving to one A B a character of the plaintiff as a domestic servant."

I am much inclined to think that some at least of the judges would now, if the matter were *res integra*, think that form sufficient under the Procedure Act of 1853; but, at all events, it and similar forms could be adopted by a general order under the 233rd section, for, unquestionably, such a form and not the verbose one in use, is "in accordance with the intention and object" of the Act.

Another source of enormous prolixity is the multiplicity of counts and paragraphs in the summons and plaint.

This was adopted from the declaration, and the practice of multiplying counts was the result of an uncertainty which formerly prevailed as to the manner and extent in or to which the presiding judge would exercise his powers of amendment in cases of variance, his refusal to amend being then considered incapable of review by the court. The liberality with which the present judges exercise this power, and the decision of the Exchequer Chamber, that the refusal to amend is reviewable, remove this difficulty; and I think the use of more counts than one in the same cause of action should be prohibited, unless specially allowed by the court or a judge.

2. I think the Procedure Act of 1853 is itself capable of providing a system of pleading as good as, and in some respects better than, the English system; but this opinion is encountered by the fact that it has undoubtedly failed to do so, and has broken down in practice. It is, therefore, useless to expect that the machinery which has so failed would be adopted in England; and, as I think the assimilation of the pleading in the two countries a paramount desideratum, I recommend the adoption in Ireland of the English system. But I think the defendant, when pleading the general issue, should be compelled, either by note in the margin, or indorsement, or a bill of particulars, to specify the defence or defences to be relied on; and this should be done by the defendant, at the peril of having to pay the costs of any particular found against him, and with power to the court to strike out any particular introduced vexatiously, or for any unfair purpose.

3. I think the system of Common Law Practice in Ireland, on the whole, works very fairly—quite as well as the English system, so far as I am aware.

The practice of "issues" in Ireland is much censured, and charged with causing great mischief and inconvenience. I think the evils of the practice much exaggerated. One sometimes hears this practice condemned as PRODUCING a multiplicity of issues. This is obviously erroneous. The replication *de injuria* in England puts to proof every material averment of the plea, and thus raises an issue for every averment, which is all that is done in Ireland. The true objection to the "issues" is, that they are, in a great degree, useless. A number of questions are written out on the record for the jury to answer; but it invariably happens that in the course of the trial the great majority of them become virtually immaterial, the contest being confined to one or two points of controversy.

A much more objectionable provision, in my opinion, is that section of the Procedure Act which enables a plaintiff to lay his venue where he pleases, irrespective of the place where his cause of action arose. The law established in this respect by the Procedure Act has increased the expense of litigation, and is liable to be, and frequently is, abused to purposes of injustice and oppression. I think the defendant should have the right of bringing back the venue to the place where the cause of action arose, unless the plaintiff can show some reasonable ground for trying the case elsewhere.

4. I think the defendant should, by express leave of the court, on motion on notice, be allowed to lodge money in court in actions for oral slander, assault and battery, and false imprisonment, at all events to the extent of £5. And that in all cases where money may be lodged in court, the defendant should by like leave, and so obtained, be allowed to plead any defence, as well as to lodge money, to some amount, at all events. I think this would have the effect of stopping a class of frivolous and vexatious actions of tort, too frequently brought with a view of extorting money, or some other sinister object. In such cases a defendant is in this difficulty: if he simply pays money into court he admits all the allegations against him; whilst if he defend, and there be a small verdict, he may be mulcted in costs.

I think equitable defences should be extended to every case where a court of equity would give relief against the judgment by perpetual injunction, whether unconditionally or on terms. I see no reason why terms cannot be imposed and carried out by a Judge or the Master, under the order of the Court of Law, as well as by a Court of Equity. This, of course, would not apply unless when the plaintiff and defendant in the action would be the only necessary parties to the litigation in a Court of Equity.

5, 6, 7, 8. These questions involve a variety of details which I have not had a sufficient opportunity of considering. I may also suggest that a discussion of these details will be more advantageously had after the principles and leading features of the assimilation shall have been determined.

I think the speedy issue of execution, the combination of ejectment on the title with the action of mesne rates, and the jurisdiction as to waiver of temporary bars, in the Irish Acts, eminently worthy of preservation.

I believe the provisions of the Irish Act, as to the production and inspection of documents are, in some respects superior to the corresponding English enactments.

I think the provisions of the 64th section, as interpreted by the Court of Common Pleas, in the well-known case of Armstrong *v.* Turquand, 9 Ir. C. L. R., p. 32, may, with some modification, be advantageously preserved.

Care should be taken not to repeal without re-enacting the provisions of the Irish Act of 1856, respecting the law of evidence in criminal cases. The analogous English clauses do not (as I think erroneously) extend to criminal trials.

9. Any observations which I have ventured to make are the result of my own actual experience, but I have not deemed it necessary to specify instances any further than I have done.

(Signed), CHARLES R. BARRY.

October 31, 1862.

Charles R. Barry, Esq., Q.C.

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13. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. C. H. HEMPHILL, Esq., Q.C.

C. H. Hemphill, Esq., Q.C.

1. I think the present system of Common Law pleading in Ireland, on the whole, works well. Great benefit has been derived from the abolition of special demurrers, and the present system of eliminating issues is, in my opinion, a decided improvement on the old system of pleading. By means of it the questions to be tried are presented in a popular form, capable of being understood by juries of the most ordinary intelligence. There are some defects in the details which time has served to develop, and to which a remedy can, I think, be easily applied.

In my answer to the second question, I have ventured to suggest the most material of those defects, and the remedies of which they seem capable, assuming throughout, that a main object to be kept in view in dealing with this subject, is "cheap justice."

2. As to the "*summons and plaint*," the several counts on the same cause of action should not be allowed without leave of a judge. The present system as it exists in Ireland tends to the pleadings and issues being prolix and complicated, and very often embarrasses the plaintiff in the long run. Where the powers of amendment at Nisi Prius are so comprehensive, and so readily exercised as they are and ought to be, it is not easy to conceive a case where a plaintiff could sustain any substantial injury from being confined to the one count in respect of each cause of action. If the changes are rung on the counts, it follows they must be rung on the defences—hence the multiplicity of issues, puzzling to the counsel, judge, and jury, and entailing, in every stage, fruitless expense on the suitor.

As to the "*venue*," I should have all actions *prima facie local*, except such as now are triable in the "Consolidated Nisi Prius Court in Ireland," reserving to the judges, of course, the most ample powers of changing the venue on special grounds. Under the present system enormous expense is incurred in bringing to Dublin witnesses from remote parts of the country. The expenses of witnesses are generally found to be the heaviest item in bills of costs. Again, special juries are constantly resorted to in Dublin in cases, which if tried in the country, would probably appear in the common jury list, which is in itself a great additional expense to the suitor; moreover, the class of jurors attending the Assizes are, generally speaking, more competent to deal with the evidence of country witnesses than can be reasonably expected from Dublin juries. I never could understand on what grounds this great latitude as to venue was introduced into Ireland, repugnant alike to the old law and the modern practice in England.

As to "*The Defence*."—The total abolition of the general issue in Ireland has been productive of great embarrassment. Under the present system defences which are not traverses, are generally in the most inartificial form—vicious and embarrassing compounds of pleading and evidence; nor are the pleaders to be blamed, it being impossible to reduce the system to anything like a science. Often nothing is more difficult than to determine whether issue should be taken on one of those rambling defences or not. On the one hand, it is not easy to foresee the result of an application to the Court to set aside such a defence, inasmuch as decisions in other cases, on the 83rd section of the Common Law Procedure Act, 1853, seldom assist, and the result of such an application is at all times most doubtful. The client may thus be put in for the costs of an unsuccessful motion, which costs very often bear a large proportion to the whole matter in dispute in the action. On the other hand, to take issue on such a defence is often attended with great peril at the trial, where if Counsel complains, he is often met by the observation—"Why did you not apply to the Court to set aside the defence." No advantage can be pointed out to countervail the delay, expense, and confusion, produced by this system; and I believe the Common Law Bar in Ireland are unanimous in denouncing it. In the Civil Bill Courts, where so much of the law business of the country is transacted, and such important questions constantly arise, no practical injustice, or even inconvenience, flows from the defences being *ore tenus*. I should, therefore, recommend the restoration of the general issue, as it existed in Ireland prior to the Common Law Procedure Act, 1853. If that cannot be effected, the general issue, subject to the restrictions on its use now existing in England, ought to be allowed. Among minor advantages from its adoption would be its tendency to diminish the necessity for double pleading, by which a great saving of expense would be insured to the suitor.

As to traverses, instead of the defendant being restricted to traverse as of course more than one material allegation in the plaint, he should be at liberty to traverse, without leave, all the material allegations of the plaint. In practice, this leave is most rarely refused: the application has thus become an empty form, involving delay and expense. The plaintiff should also, as in England, be at liberty as of course to traverse the whole of any plea, or subsequent pleading, by a general denial. And the defendant, in like manner, should be allowed to deny the whole, or part of a replication, or subsequent pleading. The qualification which exists in England, whereby facts not traversed are only conditionally admitted, that is, in case the plaintiff can prove the allegation traversed, and provided the allegation not traversed is material, should be adopted in Ireland. It is unreasonable and illogical that a plaintiff, failing to prove a material averment which is traversed, should be at liberty to rely on another averment not traversed, as affording a cause of action, without any proof of the truth of the latter.

As to the abolition of profert and oyer, the 64 sec. Common Law Procedure Act seems to require some amendment. It is not settled how far a party referring to a document in his pleading can, on the argument of a demurrer, rely upon its contents, as against the adversary, who may have had no opportunity of testing the genuineness of the document so produced.

As to payment into court, I think it should be allowable in all actions, except *crim. con.*, leaving it for the jury to decide on the sufficiency of the amount lodged.

As to "*pleading*" and "*demurring*" together, I cannot help thinking that this innovation on the old law is mischievous and unnecessary. In my answer to question 9, *infra*, I have specified an instance where it proved highly mischievous; and as to its being unnecessary, the principles of law are every day becoming better settled, and there should be little difficulty experienced by the skilful pleader in electing for his client between issues of law or of fact.

3. I think the present system of Common Law Practice in Ireland works extremely well, on the whole. I have, in my answer to question 4, ventured to suggest some improvement in details.

4. Greater facilities should be afforded than at present exist, enabling plaintiffs to proceed against parties out of

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the jurisdiction. The term "agent or manager," in the "Common Law Procedure Act" is extremely vague; and delay, often fatal to the ends of justice, is incurred in endeavouring to obtain an order to substitute service. The English practice in this respect appears far more reasonable than the Irish. The practice of requiring, in the case of service on corporations, a notice to be given in the newspapers, entails useless delay and expense, and is of no real value. In England, where corporate bodies are so much more numerous, no such practice has been deemed necessary for their protection.

There should be some means of compelling the plaintiff in replevin to file the summons and plaint. None such appears to exist at present; hence the defendant is often unreasonably delayed in ascertaining his right to the rent in dispute.

I think when there is a difference of opinion among the members of the Court upon a general motion, the suitor should have a right of appeal to the Court of Error similar to that enjoyed on new trial motions.

6. The following provisions of the English Common Law Procedure Acts might be advantageously extended to Ireland, *mutatis mutandis*, viz.:—as to the substitution of service of plaint, sec. 17, Common Law Procedure Act, 1852; as to the examination of judgment debtors, sec. 60, Common Law Procedure Act, 1854; as to interpleader, secs. 13, 14, 15, and 17, Common Law Procedure Act, 1860; as to payment into Court in replevin, sec. 23, Common Law Procedure Act, 1860; as to the tenant giving notice to the landlord of the service of the ejectment, sec. 209, Common Law Procedure Act, 1852; as to the misjoinder of plaintiffs, secs. 19, 20, and 21, Common Law Procedure Act, 1860.

8. The English rules, 1, 2, 3, Trinity Term, 1853, prohibiting several counts on same cause of action as of course, should be extended to Ireland.

The provisions of 3 and 4 Wm. IV., cap. 42, sec. 17, are useful, tending to discourage trifling actions in the superior Courts, and might be extended with advantage to Ireland. By this means, where the action is brought for a sum under £20, power might be given to the Court or Judge to order the case to be tried in the Civil Bill Court of the county in which the cause of action arose.

The English rule, No. 34, Hilary Term, 1853, whereby countermand of notice of trial may be given in the country, might be adopted with advantage in Ireland. In country cases proofs are very frequently directed on circuit, and instances constantly occur where there is not sufficient time to communicate with Dublin for the purpose of withdrawing notice of trial.

The provision in force in England with reference to ejectments for non-payment of rent, by which to enable a landlord to eject, there must be no sufficient distress to be found on the premises countervailing all the arrears due, ought, in my opinion, to be *restored* in Ireland. The facilities which landlords enjoy in Ireland for evicting their tenants, are repugnant alike to the Common Law and to English legislation, and has been productive of many agrarian evils in this country. In dealing with this subject it should be always borne in mind that the Irish Ejectment Code, as it is termed, was enacted at a time when the interests of landlords were mainly regarded, and the tenant class had but little or no weight in the representation of the country. As long as there is upon the land sufficient to countervail the rent due, it is against all principle that the landlord should have a right to treat the tenant's interest as forfeited.

9. To illustrate my view as to the propriety of restricting several counts, on the same cause of action, I would mention a recent case of "Murphy *v.* Farrell," in the Court of Exchequer. It was an action by the purchaser of a leasehold interest against an auctioneer, to recover back the deposit upon the vendor's failure to make good title. There were three special counts in addition to the money counts. This multiplication of counts led to several sets of defences to each, which in their turn, produced replications and demurrers, and the pleadings wound up with double rejoinders. The result was, that there were over twenty issues of fact. Had there been but the single count for money had and received, every matter in dispute might have been raised on a simple traverse, and a single issue.

To illustrate my view as to the propriety of allowing "the general issue," I shall mention only one out of many instances within my knowledge, viz.:—The case of MacMahon *v.* Ellis, in the Court of Common Pleas. The pleadings in that case ran to a very great length, and there were several motions to the Court before issues were settled upon them. Before the Lord Chief Justice of the Court, upon the summons to settle issues, were at least three meetings, with two counsel on each side. In short, considerable delay and expense were incurred, which would have been all spared had the "general issue" been pleaded.

As to pleading and demurring, I would refer to a case of "Knight and Wife *v.* Lynch," in the Queen's Bench. This was an action of slander. The defendant obtained liberty to plead and demur to the summons and plaint. The demurrer was argued in the Court below, and overruled. The plaintiffs went to trial on the plea, and obtained a verdict for £150 damages. Before final judgment in the action was marked, the defendant brought into the Court of Error the judgment of the Queen's Bench on the demurrer. The judgment of the Queen's Bench was then affirmed; but the judgments of both Courts were finally reversed by the House of Lords, which tribunal decided that the summons and plaint disclosed no cause of action. Thus both parties incurred the great and fruitless expense of a trial at *nisi prius*, which proved wholly abortive. As the records stood no final judgment was capable of being marked for either party; so each had to sustain his respective costs. This is a result which may be often anticipated, if this right of pleading and demurring is maintained.

(Signed), C. H. Hemphill.

T. K. Lowry, Esq., Q.C.

14. Answers to Questions on Common Law Practice and Procedure. T. Kennedy Lowry, Esq., Q.C.

1. The result of my experience, and my opinion of the working of the present system of Common Law Pleading and Practice in Ireland is, that nothing can be worse.

2. The change in the present system of Pleading and Practice in the Common Law Courts in Ireland that I would suggest is, to assimilate it in every respect to the English system.

(Signed), T. Kennedy Lowry.

15. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. HUGH LAW, Esq., Q.C.

1. Such experience as I have had in the Courts of Common Law convinces me that the working of our present system of pleading is far from satisfactory. The chief defects, however, would seem to result from two causes;—one, the needless abolition of certain well known forms of general denial by a defendant of the plaintiff's principal allegations (*e. g.* "never-indebted," "non-assumpsit," "not guilty," &c.); and the other, the attempt to ascertain the proper questions for trial, by insisting on a "settlement of issues" after the defence, without further pleading, instead of letting these eliminate themselves from the mutual statements of the parties.

As to the so-called general issues, these, as in use in Ireland before the recent changes were, doubtless, highly objectionable; but the proper remedy would, I think, have been, not to prohibit them altogether, but simply to restrict their meaning within convenient limits, as was done long ago in England. The question as to the total abolition of these forms was, if I remember rightly, fully considered and discussed by the first English Common Law Commissioners; but in accordance, I believe, with their recommendations, it was resolved merely to narrow the scope of the pleas by authoritative definition. The result was the pleading rules of Hil. T. 1832, embodying this and other alterations, which proved so satisfactory in England that the system of pleading thus rectified has been substantially reproduced by the English Common Law Procedure Act of 1852 and Pleading Rules of Hil. T., 1853. Now, I can see no reason why the same simple course, which thirty years' experience has approved in England, should not be equally sufficient here. The enforcement with us of greater particularity and singleness of denial in the plea or defence, instead of diminishing, will be found, I apprehend, to have increased the expense of suits, not only by necessitating motions for liberty to plead double matter where the one general traverse would have sufficed, but also by multiplying the motions to set aside defences, framed no longer in well-understood terms, but "in ordinary language" (sec. 66); a direction which, in practice, is too frequently taken as denoting, or at least justifying, the loosest and least definite forms of expression: under cover of which the pleader intentionally, or unintentionally, would often have the advantage of a somewhat larger denial than he is strictly entitled to, and which, accordingly, have to be dealt with as "*embarrassing*," under the 83rd section of the Act. Indeed the Irish system seems to press rather unfairly on a defendant. The plaintiff, with us, may multiply and vary his counts on the same cause of action as he pleases; whilst to each count the defendant can plead but one defence, and that, if a traverse, by denying (generally speaking) but *one* material fact stated in the count. In England, on the other hand, a plaintiff is not permitted thus to vary his statement of the cause of action without the sanction of the Court or a Judge, whilst the defendant has the benefit of the *general traverse*. In both these respects the English system appears to me much better than ours.

With respect to the "settlement of issues" after defence filed, I believe I may say that the radical change thus introduced by the 48th and 102nd sections of our Act of 1853 has been generally disapproved of by the profession. The prohibition of any pleading after defence is in very many cases useless, and in others mischievous, as only increasing the opportunities for mistake, and, at all events, entailing the additional expense of application to the Court. Besides, it would seem to me that the parties, or their advisers, may well be left to reply or rejoin, &c., &c., as they think desirable, and thus arrive at the precise questions in controversy between them, without any interference by the Court. No doubt it was expected that this early settlement of the issues would not only save expense, but also tend to simplify the questions to be submitted to the jury. However, as far as my experience goes, the change has not been attended with either of these advantages. The "settlement of issues" is, on the whole, just as costly as the pleading which it supersedes. In cases where the defence is merely a traverse, nothing is gained in point of simplicity of issue; and in many of those in which the defence is one of confession and avoidance, the sweeping issue—"whether it is true in substance and fact?"—presents the controversy to the jury much more vaguely than if further pleading had been permitted, and the issue for trial thereby eliminated.

In this particular, then, as also in the use of the general traverses before mentioned, I think the English procedure greatly preferable to ours, and would gladly see it adopted here.

There are also some other respects in which I think the system of pleading in Ireland defective; but as they are of minor importance, it will be sufficient to notice them in answering the next question.

2. I would beg to suggest the following changes in the present system of pleading in the Common Law Courts in Ireland:—

I. That a plaintiff should not be permitted *as of course* to introduce in his declaration "several counts on the same cause of action," for I cannot see why a plaintiff should in this respect be in a better position than a defendant.

II. That the joinder of several as plaintiffs, and recovery by one or more of them, be permitted, as now in England, by the Act of 1860 (sections 19–21).

III. That the *general traverses* (*e.g.* "never-indebted," "non-assumpsit," "non-detinet," and "not guilty") restricted in their import as in England, should be permitted. (See English Common Law Procedure Act, 1852, sec. 76, and Rules, Hil. T., 1853.)

IV. That *payment into Court*, and pleading accordingly, should be permitted in *replevin*, and *actions on bonds*, conditioned for payment of lesser sums than the penalties, as provided for in England by the Act of 1860, sections 23–5; if not, indeed, in *all* personal actions.

V. That pleas of *payment* and *set off*, and other pleadings capable of being construed distributively, should be so taken, and the issues found accordingly.

VI. That *replications* and subsequent pleadings should be allowed *as of course*, (and settlement of issues thus superseded).

VII. That the right of a party to *plead* and *demur* by leave of the Court or a Judge, should be extended to all pleadings, as in England.

VIII. It would, I think, be as well also to abolish the real action of *dower*, *right of dower*, and *quare impedit* as such, and provide for the institution of like suits by the ordinary mode of writ of summons, as done in England by the Act of 1860 (sections 26, &c.)

3. The working of the present system of Common Law Practice in Ireland is, I think, tolerably satisfactory, save as regards the *settlement of issues* already mentioned. There are, however, some other particulars in which the English system seems preferable, and in which, therefore, I think ours should be made conformable to it. These are briefly noticed in the next answer.

4. I would suggest the following changes in the present system of practice in the Common Law Courts in Ireland:—

I. That in actions against corporations the notice in the *Gazette* and local newspapers, required by the proviso at the end of the 33rd section of the Irish Common Law Procedure Act, 1853, be dispensed with as uselessly imposing trouble and expense.

II. That in addition to the right to have an order for substitution of service on the Irish agent of a defendant resident out of the jurisdiction, a plaintiff should be permitted to serve such defendant; or, if unable to effect service, to have the attempt deemed good service where the writ appears to have come to the latter's knowledge. (See English Common Law Procedure Act, 1852, sections 18, 19.)

There seems to be no reason against permitting a defendant's being served abroad; or at least no special reason for withholding this power from an Irish plaintiff. The substitution of service with us, allowed only where the defendant has an agent here, in effect pro-

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hibits actions where a just demand is least likely to be satisfied without legal process. The English Act is not so restricted to cases of resident agents, but seems to me to be needlessly confined to defendants resident out of the United Kingdom. For this I confess I can see no sufficient reason. The *cause of action having arisen within the jurisdiction*, I cannot understand why service should not be permitted on the defendant in any other part of the United Kingdom as well as abroad, and I would accordingly suggest that the permission should extend to defendants resident anywhere out of the jurisdiction.

III. That the provision that a renewed writ shall prevent the bar of the Statute of Limitations, only where obtained on motion and affidavit, showing that "diligence" was used to effect service of the former one, should be repealed. (See Irish Common Law Procedure Act, 1853, sec. 28.)

Considering the nature of the defence of the Statute of Limitations, I cannot see why this condition should be imposed on the plaintiff. None such is in the English Act; and, indeed it would seem at variance with the object of the Legislature, which, apparently, was to afford every facility for renewing a writ, and thus preventing a rightful claim being defeated. Suppose a writ issued and forgotten, or even carelessly mislaid by the attorney, or that there are efforts at arrangement, and that where these prove futile, or the mislaid writ is discovered or remembered, service is for the present impossible, and the six months are on the point of expiring. It is difficult to see, in such a case, where the defendant has done nothing to alter his position, why the plaintiff should not be entitled to have his writ renewed and his just demand enforced. Whilst to transfer the liability in case of "negligence" from the debtor who dishonestly repudiates his debt, to the attorney who has been guilty of mere inadvertence, would seem rather "wild justice."

IV. That the parties should be authorized, after writ issued (by consent and leave, &c.), to raise any question of *fact*, and have the same tried, as they now may questions of *law*. (Act, 1853, sec. 92.)

V. It would, I apprehend, be desirable that the continuance of the enactment 35 Geo. III., c. 30, sec. 31 (providing that arrest or discharge by a creditor of his debtor shall not amount to a satisfaction of the debt), notwithstanding the terms of the Irish Common Law Procedure Act, 1853, sec. 140, should be *declared*. (See Messrs. Jellett and Holland's Rep., p. 18.)

VI. That the improvements in English practice effected by the Procedure Amendment Act, 1860, as to interpleader, attachment of debts, and mandamus and injunction, respectively, should be extended to Ireland.

5. I think some few peculiarities of the Irish Common Law Procedure Amendment Acts are improvements, and might advantageously be extended to England.* Such are:—

I. The power of joining *replevin* with other personal actions.

II. The power of a husband sueing with his wife, in any case in which she is necessarily a co-plaintiff, to add his own individual claims to such joint demand. (Compare Irish Act, 1853, sec. 55, with English Act, 1852, sec. 40.)

III. The provision that payment by an execution debtor to the sheriff or gaoler, as well as to the creditor or his attorney, shall entitle such debtor to be discharged from custody. (Act, 1853, sec. 139.)

IV. The defence in ejectment being made a pleading, and equitable defences permitted accordingly.

V. The power of the Court, in an action of ejectment, to make an order directing temporary bars to be waived, and the real question of title tried. (Act, 1856, sec. 89.)

VI. The power of joining the claims for mesne rates with the ordinary action of ejectment. (Act, 1853, sec. 195.)

VII. The provision giving the landlord in replevin judgment for his rent, irrespective of the value of the goods distrained (Act, 1856, sec. 101). In such cases the amount thus due has been judicially ascertained (Stat. 17 Car. II., cap. 7), and there seems to be no reason why this *finding* of the jury should not at once become a formal *judgment*, and thus prevent further litigation.

6. As already stated, I think the English system of pleading, and arriving at the issue or issues to be tried, ought to be adopted here; and I may, perhaps, also repeat my suggestion, that the following provisions of the English Common Law Procedure Amendment Acts should be extended to this country:—

I. The 16th section of the Act of 1852, as to service on corporations, instead of the corresponding (sec. 33) section of the Irish Act.

II. The provisions (Act, 1852, sections 18, 19), for service on defendants resident *abroad*, which, however, I would have extended to defendants resident *anywhere* out of the jurisdiction.

III. The provision for renewal of writs to save the Statute of Limitations (Act, 1852, sec. 11), instead of the 28th section of the Irish Act.

IV. The provisions of the English Act of 1860, as to relief against forfeiture for non-insurance against fire, sec. 2; interpleader, secs. 12, &c.; joinder of plaintiffs, secs. 19, &c.; *payment into Court*, secs. 23–25; substitution of ordinary form of actions for *writs of dower, right of dower*, and *quare impedit*, secs. 26, 27; *attachment of debt*, secs. 28–31; *mandamus and injunction*, secs. 32, 33.

7. There are some minute points of difference between the English and Irish systems of procedure, as mentioned in Messrs. Jellett and Holland's Report, in which ours appears to me the better of the two. Such, for example, as a bill of exceptions, being merely signed, and being examinable in the Court in which the action is brought; the requiring counsel's certificate in motions for new trial, &c.; but they are not of such importance as to justify further notice here. The only peculiarity of our system which occurs to me as especially worthy of attention in England is the provision of the Irish Act, 35 Geo. III., cap. 30, sec. 31, preventing the mere arrest or discharge of a debtor by his creditor being a *satisfaction* of the debt.

8. So far as relates to procedure, simply, I do not know that there are any other provisions or rules peculiar to England which are in themselves particularly worthy of adoption here. But I believe I express an opinion entertained very generally by the profession when I say I think it extremely desirable that the system of procedure should be made one and the same in both countries. Without reference to any other considerations, it is obvious that the decisions in each being thus applicable in the other, the conduct of causes would be greatly facilitated, and their cost thereby to some extent lightened. Such an assimilation, too, I may add, is the more desirable for us, inasmuch as the great majority of decided cases, and all the text-books to which we can look for assistance, are English, and of course deal with the English system. So far as the systems differ, all these are now manifestly useless, or rather worse than useless, as likely to mislead; and I cannot understand why the guidance which they might so readily be made to afford should be thrown away. This is the more unintelligible when it is observed that almost all the peculiarities of our system are comparatively unimportant, and in fact merely accidental in their origin: whilst, with the exception of the provision as to arrest or discharge, noticed in the last answer, the very few in which any principle is involved are precisely those which almost all alike regard as indefensible.

Perhaps it may not be out of place to notice that even already each of the Courts of Common Law in Ireland has, on some points, established for itself a

* The combination of writ of summons and plaint is by many supposed to be an improvement on the English system. The advantage, however, seems to me to be very doubtful, as the addition of the plaint needlessly increases the costs when the action is undefended. If such cases are comparatively few, no doubt ours is the better form of demand; but if, as seems probable, the cases in which the demand thus made is at once submitted to, bear a large proportion to those which are contested, the English is as clearly the right mode of commencing an action. This question can readily be ascertained by a return from the offices of the number of summons and plaints issued and defences filed.

practice different from that followed by the others. Now, to prevent this, I would suggest, that when any such difference first appears, the Judges should meet and arrange on some one common rule to be followed by all. In this way uniformity may easily be preserved, and the serious inconvenience which often arises from the present diversity of practice be wholly avoided.

I would also desire to mention a further change which I think desirable both in England and Ireland, and that is—the employment of some short-hand writers to take down the evidence of witnesses at Nisi Prius. However able and anxious a Judge may be, the fragmentary translation which can alone be looked for in his notes will, at times exhibit the most fatal omissions, and, in any case, gives but a very imperfect idea of the actual testimony. Of course, it would not follow that the short-hand notes should be always transcribed. Such would, no doubt, be done when motions for new trial or other ulterior proceedings became necessary; but it would, I submit, be a great advantage to have the actual testimony preserved *verbatim* for the parties or Judge in the Court above to resort to in case of any difficulty or dispute thereon. Meantime, the notes should be deposited with some of the officers for safe custody.

(Signed), HUGH LAW.

October 31, 1862.

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16. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. DENIS CAULFEILD HERON, LL.D, Q.C.

I regret that pressure of business has prevented me from writing at length upon the queries with which the Commissioners honoured me.

As to queries 1 and 2, I consider the working of the Common Law system of pleading in Ireland most unsatisfactory. I consider that the "issues" ought to be abolished, and the old system of pleading restored without special demurrers.

To query 9.—In the case of Newcastle Bank *v.* Tipperary Bank, Queen's Bench, 1857; Cuthbert *v.* Scott, Common Pleas, 1862; Boyd *v.* Fitt (two cases), Exchequer, 1862; the cases were tried on the general issue by consent, the new system being found inconvenient. (Signed),

D. C. HERON.

17th August, 1862.

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17. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. HENRY CONCANON, Esq., Barrister-at-Law.

1. In my opinion the working of the present system of Common Law pleading is beneficial, when compared with that which it superseded. I particularly allude to special demurrers, which are abolished by the Common Law Procedure Act of 1853, s. 81.

2. In reply to this question I would suggest the following changes:—

I. All actions should be commenced by writ and declaration, as in England. The summons and plaint is so like a civil bill process that it is frequently treated as one, and not brought to the attorney of the party served until the time to appear to it has nearly expired; this leads to delay and applications to the Court for the purpose of extending the time to plead.

II. All declarations should be signed by counsel, whose fee, varying from ten and six-pence to one guinea, should be taxable against the unsuccessful party.

I have known much inconvenience to arise from plaints, apparently simple, being prepared unskilfully; for instance, no fee is allowed for preparing a plaint for "money had and received," a form of action which admits of many and nice distinctions.

I have known a case in which a plaintiff was seriously embarrassed by not joining a paragraph for "an account stated" with one for "money had and received."

III. The pleadings should continue, as in England, until issue joined (see Mr. Holland's Separate Report, page 48.) I prefer the replication, rejoinder, and subsequent pleadings, as in England, to the system of pleading adopted in Ireland (see Mr. Jellett's Separate Report, page 37.)

IV. Save as to the general issue, which I would not adopt, I think the English and Irish systems of pleadings should be assimilated. There is no reason why they should not. It would be beneficial to the profession, as well as to the public, that the decisions and precedents in one country should be applicable to the other. I disapprove of the general issue, even as modified, in England, which, as I understand it, is somewhat analogous to an issue sometimes adopted in Ireland under the Common Law Procedure Act, viz: "Is the defence true in substance and fact?" This form frequently involves the defendant in considerable unecessary expense in the preparation of proofs for the trial. It often imposes on the plaintiff the necessity of being prepared to prove at the trial a number of material and necessary averments, the failure of proof of any one of which might be fatal, but which would not be controverted if this compendious mode of traverse were not permitted.

I have myself known many cases illustrating this statement. At the trial, counsel, as a matter of duty, will watch for a failure of proof of any material averment, and take advantage of it, when the particular averment would not have been disputed if it were necessary distinctly on the pleadings to traverse it.

3. I think the present system has, on the whole, worked well.

4.—I. I think the system in Ireland which enables a plaintiff to lay the venue where he pleases, and throws on the defendant the necessity of making a special case in order to change such venue, is faulty to an excess; it throws the burden on the wrong party.

I would suggest that the defendant be at liberty, as heretofore, before the Common Law Procedure Act, to change the venue by motion, without notice, on the common affidavit, and then to enable the plaintiff, upon a proper case, to bring back the venue to the place he originally laid it.

I have been in cases where a defendant has been obliged to bring all his witnesses to a distant county, although the plaintiff, who was confessedly a pauper, and all the plaintiff's witnesses, resided in the same county with the defendant.

The only convenience often suggested is that a trial can sooner be had in the county where the venue was laid by the plaintiff than in that where the cause of action arose, a convenience which a plaintiff can always secure, as he can select the time for bringing the action. I do not think that convenience to the plaintiff an equivalent for the mischief arising from pauper and disreputable plaintiffs bringing speculative actions, laying the venue in counties where their position and character are unknown.

I have known instances of successful experiments of that nature, where the action would never have been brought if the case should be tried in the place where the plaintiff's character, and that of his witnesses, were known; and I have likewise known instances where such actions were abandoned on the venue being changed to the proper county.

The old mode of striking special juries should be restored, or if that be not done, and the present mode be continued, I think that as an equivalent for the former power of striking off twelve names, the plaintiffs and also the defendants should have a right of peremptory challenge at the trial of, say six names. This would prevent a system, which to a considerable extent now prevails, of getting a "booteater" on the jury, to at all events stop a verdict. If the latter course be adopted, the Sheriff's fee for striking a special jury should be discontinued: no equivalent is given, and it acts as a premium for having a very inferior class of common jurors.

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II. The plaintiff's attorney should be required to serve on the Returning Officer of the Sheriff of the county where the venue lies a copy of the notice of trial at the same time as he serves it on the defendant's attorney; and in case he serves a notice withdrawing the notice of trial, he should, in like manner, serve a copy on the Returning Officer. This would afford considerable facilities in circuit cases.

5.—I. The 52nd and 53rd sections of the 23rd and 24th Vic., c. 104, should be extended to England, so as to enable a landlord to bring an ejectment for non-payment of rent, in all cases where rent is due upon a contract to such landlord. There is no reason why such ejectment should be limited to cases where the landlord has a reversion, or where the tenant holds under a grant, lease, &c.

II. In England each party should furnish to the other, as in Ireland, copies of all pleadings and affidavits.

(Signed), HENRY CONCANON.

28th July, 1862.

Charles Shaw, Esq., Barrister-at-Law.

18. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. CHARLES SHAW, Esq., Barrister-at-Law.

I respectfully submit to Her Majesty's Commissioners the following answers to the questions forwarded to me by their directions, expressing, at the same time, my regret that I have been unable to give to the subject that time and attention it requires.

1. In my opinion the present system of Common Law Pleading in Ireland works well, so far as relates to the commencement of the action by summons and plaint; but, according to my experience, the Thirty-fourth General Order of 1854 is not sufficiently observed or enforced. A more stringent rule, requiring each paragraph of the summons and plaint to be numbered, and prohibiting the joinder of two or more causes of action in the same paragraph, would, I think, be beneficial.

In my opinion, the present system of pleading does not work satisfactorily, so far as relates to the defence and subsequent pleadings. The combined operation of the 57, 58, 70, and 71 sections of the Common Law Procedure Act, 1853, in abolishing the general issue and confining each defence, by way of denial, to the traverse of one fact, leads in many instances to unnecessary prolixity of pleading, and incumbers the abstract with a number of collateral issues, tending sometimes to confuse the jury. The issues under the present system of pleading often amount to fifteen and upwards.

2. I believe it to be a great disadvantage to us in Ireland having a system of pleading differing from the English system. We are thereby, in a great measure, deprived of the benefit of the decisions of the English courts and judges on questions of pleading. I respectfully suggest that the Law and system of pleading in both countries should be assimilated; at all events, that the English system, allowing a plea of the general issue (limited in its effect), and allowing the defendant to traverse generally such of the facts contained in the plaint as might have been denied by one plea, or to select and traverse generally any material allegation, should be substituted for the present system.

That the right to plead and demur by leave of the Court should be extended to all pleadings.

That the defendant should have power to require the plaintiff to reply or furnish the abstract of issues within a given time from the filing of the defence, as provided by the English Common Law Procedure Act, 1852, sec. 53.

3. There is a want of certainty and uniformity in the practice of the Superior Courts of Common Law, which, in my opinion, renders the present system of Common Law Practice, in Ireland, defective. Mr. Jellett has, in his report, referred to some instances in which the Superior Courts differ in practice. In cases under the Interpleader Acts, referred to in page 22 of the joint concise statement of Messrs. Jellett and Holland, there is a difference in practice between the Court of Exchequer and the other courts, which may be worth mentioning:—The former court gives to the sheriff all his costs as against the unsuccessful party; the other courts give to the sheriff only such costs as he may have incurred, by direction of the Court or Judge, after obtaining the order for interpleader.

4. I should suggest that the practice in this country should, as far as possible, be assimilated to the English practice.

That a uniform system of practice should, at all events, be adopted by the three Superior Courts of Common Law, in each country. And that in all cases where there is a difference in practice between the courts, a meeting of the Common Law Judges should be held, and the practice to be adopted should be determined by the majority.

That the number of days upon which a Judge shall sit in Chamber to hear motions for the three Courts of Common Law should be increased from two days in the week to, at least, three days in the week in the intervals between Hilary Term and the Spring Assizes, and between Trinity Term and the Summer Assizes.

5. In my opinion the provisions of the Irish Common Law Procedure Acts hereunder mentioned might be advantageously extended to England. That is to say—

The provisions of the Common Law Procedure Act, 1853, sections 8 and 194, substituting the writ of summons and plaint for the writ of summons and the declaration, and the provisions of same Act combining the appearance and defence.

So much of the 52 sec. of same Act as provides that no order for security for costs shall be made, unless on a satisfactory affidavit that the defendant has a defence on the merits.

The provisions of the 64 sec. of same Act as to inspection of deeds.

So much of the 76 sec. of same Act as provides that after verdict or judgment for defendant, money lodged in court shall be applicable for costs.

The provisions of the 139 sec. of same Act which entitle any party arrested under any writ of Ca Sa to his discharge from arrest, on payment or tender to opposite party, or his attorney, or to the sheriff or gaoler, in whose custody he may be, the amount directed to be levied by the writ.

The provisions of the same Act, sec. 202, which enable a plaintiff to recover mesne rates in an action of ejectment.

The provisions of the 89 sec. of the Common Law Procedure Act, 1856, enabling Courts of Common Law to direct temporary bars to be waived in actions of ejectment.

6. In my opinion the provisions of the English Common Law Procedure Acts, hereinafter mentioned, might be advantageously extended to Ireland. That is to say—

The provisions of the 18 and 19 sec. of the Common Law Procedure Act of 1852, as to service out of jurisdiction of writs against British subjects and foreigners. And it appears to me that the exceptions contained in the 18 sec., of places within the United Kingdom, might be advantageously omitted.

The provisions of the 19 sec. of Common Law Procedure Act, 1860, as to joinder as plaintiffs of persons whom the legal estate is supposed to exist.

The provisions of the 13, 14, and 15 sections of Common Law Procedure Act, 1860, as to interpleader cases.

The provisions of the 60 sec. of Common Law Procedure Act, 1854, and of the 28, 29, 30, and 31 secs. of Common Law Procedure Act, 1860, as to attachment of debts.

I should respectfully suggest that the power of paying money into court should be extended to all personal actions.

(Signed), CHARLES SHAW.

1st November, 1862.

19. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. EDWARD T. FFRENCH BEYTAGH, Esq., Barrister-at-Law.

1. The result of my experience and my opinion is, that the working of the present system of Common Law Pleading in Ireland has been very beneficial to the public. The principal improvement was the abolition of special demurrers, an object which I think could have been attained by the simple repeal of the Statutes 10 Car. 1, ses. 2, c. 11, Ir. (27 Eliz. c. 5, Eng.), and the 6 Ann, c. 10, Ir. (4 and 5 Ann, c. 16, Eng.), and their re-enactment, omitting the proviso in each as to causes of demurrer specially assigned. I do not see what useful purpose was gained by formally abolishing the special forms of action formerly used, as was done by the 5th section of the Irish Common Law Procedure Act, 1853, although by the 126th section of the same Act the plaintiff is deprived of his costs in certain actions, specially named in that section, where he recovers less than 40*s.* damages, unless the Judge certifies. The object in view was attained in England without this apparent inconsistency.

2. I may as well commence my answer to this question by stating generally, that, in my opinion, every deviation in our system of pleading in Ireland from that pursued in England, is a change for the worse.

1. The principal alteration in the course of pleading in this country which I would recommend is the adoption, both in actions of contract and of tort, of the general issue, modified as it now is in England, as a mode of defence. I think the present system of requiring every matter of defence to be specially pleaded in actions both of contract and of tort (sections 70 and 71, I. C. L. Proc. Act, 1853), tends to prolixity, without any counterbalancing advantage. For instance, in actions of libel in Ireland, where there are innuendos alleged, the usual defences are, "that the publication is not a libel," and that, "it was not published in the defamatory sense alleged." If, in addition, the defendant seeks to rely on the defence that the communication was privileged, he is compelled to plead all the facts, however numerous they may be, which establish the privilege, and to aver that the publication was made *bonâ fide*, without malice, the defendant believing it to be true. In England all these defences are available under the plea of "not guilty." The necessity of setting out the facts constituting a defence of privileged communication greatly lengthens the pleadings, and leads to frequent demurrers, and applications to set aside the defences as embarrassing, and seems also to be a departure from principle, as pleading evidence, and amounting to an argumentative traverse of the malicious publication alleged. The plaintiff, in actions for defamation, is, almost invariably, perfectly well aware of the occasion upon which the words complained of were written or spoken, and at all events, a note in the margin of the plea of "not guilty," that the defendant intends to rely on the ground that the communication was privileged by the occasion, would serve every purpose of apprizing the plaintiff of the nature of the intended defence.

Again, in actions for malicious prosecution, the course pursued in Ireland, for some time after the passing of the Irish Common Law Procedure Act, 1853, was to traverse in terms every averment in the plaint (Cantwell *v.* Cannock, 3 I. C. L. Repts., 78). But this absurd system has since been altered (Brennan *v.* Williams, 9 I. C. L. App. 35; Smith *v.* Whelan, 10 I. C. L. App. 17); and I believe the usual course now, in traversing the facts alleged, is to say, that "it was not without reasonable and probable cause that the defendant" did what is complained of, specifying the acts traversed. Surely there can be no comparison between this prolix and awkward mode of defence, and the plea of "not guilty," which puts in issue the fact of prosecution, the malice, and the want of probable cause. It appears to me, besides, that the supposed principle which makes it imperative to set out in pleading the facts that constitute a defence of privileged communication, would, if consistently adhered to, require that the evidence of the existence of reasonable and probable cause should also be specially pleaded.

I also think the adoption of the general issues, "non assumpsit," and the like, equally desirable, and that the special traverses of all the paragraphs (as they are called) of the plaint, lead to prolixity and multiplication of issues, embarrassing to the jury, and expensive to the parties.

It has been decided in this country that, in an action by a governess for wrongful dismissal, the following defence is valid, namely, "that the plaintiff did not, by agreement between the plaintiff and the defendant, enter into the service of the defendant, in the capacity of governess and instructor of children, at a salary of £20 per annum, payable quarterly; such service to continue until one calendar month's notice to determine same should be given, on either side;" a form of pleading which appears to me to be open to every objection that could possibly be urged against the widest use of the general issue, and to some others besides; and yet the Court of Exchequer (Baron *Greene* dissenting), was coerced, I presume upon the construction of our Acts, to support it. Winton *v.* Moore, 8 I. C. L. Repts. 234.

I think, too, that the plea of the general issue by statute, at least as to public statutes, is a convenient one, and ought to be adopted in Ireland. In one of the Irish Statutes passed since the enactment of the Irish Common Law Procedure Act, 1853, I mean the Towns Improvement (Ireland) Act, 1854, 17 and 18 Vic. c. 103, sec. 95, a species of general issue is provided for a person sued for any thing done under the authority of that Act, viz.:—"That he did what is complained of under the authority of that Act," and the defendant is, by the same section, enabled to give the Statute and all special matter in evidence under that defence.

11. I think the introduction of pleadings in ejectment for non-payment of rent was an infelicitous alteration. The form of plaint in this case given in the Schedule No. 15 to the Irish Common Law Procedure Act, 1853, states a tenancy by lease, the fact that a year's rent is due, and prays judgment to recover the possession of the premises. To be consistent, a similar form should be used in the case of any other forfeiture of a tenant's interest; but this is not the law, and in the event of any other breach of condition, the landlord is left to his remedy by ejectment on the title. The greatest difficulty, however, arises as to the mode in which defence is to be taken by one of several defendants, who wishes to traverse the fact of tenancy to the plaintiff, especially since the passing of the Landlord and Tenant Law Amendment Act, 1860 (23 and 24 Vic. c. 154), the 52nd section of which authorizes such an ejectment to be brought upon a tenancy from year to year. It was decided that under the Irish Common Law Procedure Act, 1853, where a defendant in ejectment for non-payment of rent, sought to deny the plaintiff's title as landlord, he should plead "that the defendants, or any of them, or any other person, did not hold the premises or any part of them, as tenants to the plaintiff;" the cases are collected, Ferg. Proc. Act, p. 235; see also Bell *v.* Beatty, 6 I. C. L. Repts. 399; and where since the passing of the Landlord and Tenant Act, 1860, an ejectment for non-payment of rent was brought upon a tenancy from year to year, and the plaint alleged that the *defendants named* held as such tenants, at a rent stated, a plea by one defendant, traversing the holding by him, together with the other defendants as alleged, was held valid (Murphy *v.* Cary, 11 I. C. L. Repts. App. p. 9), upon motion to set it aside as embarrassing. It was afterwards demurred to, but the defendant had judgment (S.C. not yet reported, Exch. Hil. Term, 1862). But if the plaint were brought, alleging a tenancy generally, and if one defendant only were named in it, but it was served upon several others, by which means they all became defendants, I apprehend it would be difficult to frame such a defence as would raise the question of the plaintiff's title as landlord of the premises which would not be open to serious objections in point of pleading. I think all these difficulties would be removed by the following simple

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expedients :—The plaint in ejectment for non-payment of rent should be similar to that in ejectment on the title ; but a note should be subjoined that it was brought for non-payment of rent. Under the old system in Ireland, previously to the passing of any of the Procedure Acts, a note in the following form, and signed by the plaintiff's attorney, was added to every such ejectment, viz. :—"You are desired to take notice, that the above ejectment is brought for non-payment of rent, pursuant to the several statutes in that case made and provided." Something similar to this, with an endorsement of the amount of rent demanded, would answer every purpose of apprizing the defendant of the nature of the claim alleged against him. The appearance or defence should be as in England, with this addition, which might perhaps be advantageously adopted in both countries, namely, that if payment of the rent were relied upon, a note or memorandum to that effect should be added, and particulars of such payments endorsed.

III. I think the departure from the old nomenclature, by calling the declaration a plaint, and the plea a defence, is to be regretted. No useful purpose was served by it; and, in my opinion, the sooner we restore the old names the better.

3. I think the present system of Common Law Practice in Ireland has, upon the whole, operated beneficially ; but, as I have already observed with respect to the system of pleading, I think that so far as it deviates from the English practice, it is generally objectionable, and ought, as soon as possible, to be made conformable to the English procedure. I think it is of the highest importance that the English decisions, both upon pleading and practice, should be authorities here in like cases; and I consider the English system, in both particulars, greatly superior to ours in neatness, precision, and accuracy.

4.—I. In my opinion the action should be commenced by the service of a writ, as in England, but where the claim is a debt, or liquidated money demand arising upon contract, I think it should be compulsory on the plaintiff to endorse on the writ particulars of his demand ; and if no appearance be entered, then that the plaintiff should be at liberty to mark judgment for the sum claimed, and costs. In short, the plaintiff should be compelled to do what it is left optional with him to do or not by the 25th section of the English Common Law Procedure Act, 1852. I think the embodying of the writ and declaration in our summons and plaint was not an improvement. The defendant often looks upon the writ when served in the light of a civil bill process, to which no pleading in answer is required ; it is therefore frequently not sent forward to an attorney until the time for pleading is just about to expire, and then generally without sufficient instructions. The result is, that mere traverses of the causes of action are put in, the real defence is unknown and not pleaded, and the opportunity of paying money into court, or of pleading a set-off, is lost, or else expense is incurred in obtaining permission to file these additional defences. Applications are also frequently made to the courts, ex parte, to extend the time for pleading where counsel sees, even upon the face of the plaint, that there are important questions to be raised and decided, which cannot be done without further information ; the orders upon these motions must be served upon the opposite attorney, to prevent his marking judgment, and thus delay and expense is incurred. I think the service of the writ upon the party would put him upon the alert, and he would either settle the demand, or be prepared with his defence, by the time it became necessary for him to put in his plea to the declaration.

II. I think, too, that the pleadings should proceed to issue in fact or in law, as they do in England. In Ireland, under the 48th section of the Irish Common Law Procedure Act, 1853, to which there is no corresponding enactment in England, the pleader must in the plaint in a great measure anticipate the defence, for he will not be allowed to put in a replication as to any matter which might have formed part of his original case (Spratt *v.* Murphy, 6 I. C. L. Repts., 489) ; so that he must jump before he comes to the stile.

III. It has been decided, on the construction of the 48th section of the Irish Common Law Procedure Act, 1853, to which there is no corresponding enactment in England, that the courts here cannot permit a demurrer and rejoinder to be filed to the same replication (Dunn *v.* Gumley, 8 I. C. L. R. App. 2) ; and the same rule, of course, applies to all subsequent pleadings. Whether this was or was not the intention of the framers of the Act, I think it ought to be remedied.

IV. The Courts here have decided that equitable defences under the Irish Common Law Procedure Act, 1856, section 85 (English Common Law Procedure Act, 1854, section 83), are admissible, at least in ejectments *for non-payment of rent*—Turner *v.* M'Auley, 6 I. C. L. Repts. 245. The contrary is the law in England. These defences in Ireland have hitherto been almost uniformly unsuccessful in ejectments—Deering *v.* Lawler, 7 I. C. L. Repts. 333—and I think ought to be declared inapplicable to that action, or at all events, that the law upon the subject should be assimilated in the two countries.

V. I think that so long as the Courts of Law and of Equity are kept distinct, the power to compel parties to waive temporary bars ought to be left to the jurisdiction of the Equity Court; and, therefore, that the 89th section of the Irish Common Law Procedure Act, 1853, to which there is no corresponding enactment in England, ought to be repealed ; or, if thought beneficial, that it ought to be extended to the English Courts of Common Law.

VI. I am of opinion that the English Common Law Procedure Act, 1860 (23 and 24 Vic. c. 126), ought to be extended to Ireland. I think it is much to be lamented that there should be separate legislation on legal subjects for the two countries. The Bills of Sales Act, the Summary Procedure on Bills of Exchange Act, and many other useful measures, were in force in England for some years before they were extended to Ireland. This gives rise to what are called here "Omnibus Acts," such as the 3 and 4 Vic. c. 105, which extends to Ireland the provisions of several statutes, apparently not very closely connected with each other. Again, the gentleman who adapted the English Common Law Procedure Act, 1854, to this country, by the Irish Common Law Procedure Act, 1856, has effected, where one would have least expected it, a rather startling change in our criminal law, by making comparison of handwriting admissible in criminal cases.—See sections 30 and 98 I. C. L. Proc. Act, 1856. The corresponding enactment in England is confined to civil cases, 17 and 18 Vic. c. 125, sec. 27, Eng.

VII. I have already, in my answer to the second question, stated my views as to ejectments for non-payment of rent, and it is therefore unnecessary to repeat them here.

VIII. I think the whole subject of the revival of judgments against heir and terre-tenants requires revision. The matter is not alluded to in either of our Procedure Acts. The Irish Statute, 26 Geo. III. c. 31, called O'Neil's Act, would require consideration in connexion with this subject, which, however, is too multifarious to be dealt with here.

5. I speak with great diffidence when I suggest any alterations in the course of procedure in England. There are, however, a few very minor details, which, it has occurred to me, might be advantageously adopted there.

I. I think the 64th section of the Irish Common Law Procedure Act, 1853, which provides for the production, upon every trial and argument in the cause, of any deed or document relied upon by either party in his pleading, a very beneficial enactment, and one that ought to be extended to England, there being, as I believe, at present no corresponding enactment there. It has been decided here that under this section the Court, upon the argument of a demurrer, may look at and decide the case upon the construction of the whole of a document, a portion of which only is set forth on the pleadings, which portion taken alone might lead to a very different conclusion—Armstrong *v.* Turquaud, 9 I. C. L. Repts. 32. I have myself known points arising upon very voluminous deeds decided upon very brief plead-

Edward T. Ffrench Beytagh, Esq., Barrister-at-Law.

ings by the operation of this section, interpreted by the decision I have mentioned.

II. I think the provision in the 195th section of the Irish Common Law Procedure Act, 1853, enabling a plaintiff in ejectment on the title to include in the action a claim for mesne rates, a very beneficial one, and that it ought to be extended to England.

III. I think the 52nd section of our Act, which requires an affidavit of merits from a party who seeks to compel a plaintiff resident out of the jurisdiction to give security for costs, ought to be extended to England.

IV. I think our practice of endorsing on the plaint the amount of costs payable, if the action be settled without filing a defence, highly beneficial, and one that ought to be extended to England.

V. I think the provision in the Irish Process and Practice Act, 13 Vic. c. 118, sec. 44, requiring service of copies of all pleadings when filed, and of affidavits intended to be used upon motions, and dispensing with attested copies, a very useful one, as saving expense and preventing delay, and that it ought to be extended to England, if not already the practice there.

6.—I beg leave to refer to my answers to the second and fourth questions.

7.—Nothing beyond what I have already suggested.

8.—Nothing beyond what I have already suggested.

9.—In the course of my answers to the previous questions I have referred to such cases (in some of which I was counsel), as occurred to me, and appeared to bear upon and illustrate my views.

(Signed), EDWARD T. FF. BEYTAGH.

74, Blessington-street,
8th July, 1862.

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20. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. GEORGE A. C. MAY, Esq., Barrister-at-Law.

George A. C. May, Esq., Barrister-at-Law.

1.—I think that the present system of pleading at Common Law in Ireland, as contrasted with that which it displaced, has upon the whole worked beneficially.

The matters in litigation between parties have been, I think, decided more rapidly and more economically than formerly. The principal improvements were, the abolition of forms of personal actions and the discouragement of all objections merely formal and technical. The mode of eliminating the issues to be tried by juries introduced by the Common Law Procedure Act of 1853, has not, I think, worked in a satisfactory manner. In simple cases no change of system was required; and in those of greater complication the new method leads to confusion and entanglement. The issues to be tried, in the result are frequently found to have been unfortunately selected, and many of them to be unnecessary. The object intended—the limitation of the points to be proved—has not, I think, been attained to any considerable extent. And, upon the whole, I do not think this element of our Procedure has proved so beneficial as to warrant its retention, recollecting that it is by our system of "issues" that our pleadings are principally distinguished from the English, and that any benefit to be derived from this method of procedure is attained at the sacrifice of uniformity.

2.—It would be, I think, desirable to adopt some of the English rules of pleading.

I. Several counts grounded on the same causes of action should not be allowed without leave of the Court. They have generally, I confess, appeared to me to owe their origin rather to the ingenuity of the pleader than to any benefit to be derived from their adoption.

II. I think the plea of the general issue, restricted as it is in its import by the English rules, ought to be allowed.

The objections, that by such a plea the plaintiff is obliged to prove matters not really in dispute, or that he is left in the dark as to the ground of defence intended to be taken by the defendant, are, I think, rather specious than well-founded in a practical point of view. This plea, limited as it now is in England, does not appear to leave open too large a field of inquiry; and it is to be recollected that the parties themselves can now, in most cases, prove all the preliminary and collateral parts of the case with facility and without expense.

III. I think that to all pleas in confession and avoidance the plaintiff should be entitled to reply, traversing the plea generally.

In the great majority of such pleas, the facts on which they are grounded are within the defendant's knowledge, and can be proved by his own evidence. But in any case, I do not think that the plaintiff ought in such cases to be embarrassed by the necessity of selecting and traversing certain of the averments contained in such pleas, and of passing over, and thereby admitting, other statements of fact made therein.

3.—I think that the present system of Common Law practice in Ireland, on the whole, works in a satisfactory manner.

4.—I can suggest but very few alterations in our system of practice.

I. I think the rule as to costs in actions of libel should be assimilated to that in slander; and in both actions, I think a defendant should be allowed to pay money into Court.

II. The recent rule as to service of ejectments for non-payment of rent should, I think, be rescinded, and the former practice restored.

III. In ejectment, a defendant should be allowed to take defence at any time before judgment marked as in other actions. At present, I understand a defence will not be received after the expiration of the time for taking defence, though judgment has not been marked.

IV. The time within which the books for the Judges in cases of error should be lodged should, I think, be clearly defined, and should be a period longer than that allowed for a similar purpose in cases of demurrer.

4.—I think it would be desirable to introduce one simple rule with respect to costs where the damages recovered are of trivial amount. That in actions of contract, where the amount recovered should not exceed £20, and in actions of tort, where the damages should not exceed £5, the plaintiff should not be entitled to costs unless the Judge should certify that the action was proper to be tried in the Superior Courts.

5.—I. The consolidation of the writ of summons and plaint, on the one hand, and of the appearance and defence, on the other, seems to be an improvement on the English practice.

II. So the provision enabling debts accruing after the commencement of the action to be pleaded by way of set-off to the further maintenance of the action.

III. So the provision that in replevin upon a distress for rent the defendant should have judgment for the whole amount of arrear of rent, irrespective of the value of the distress.

IV. So the provision enabling the plaintiff in ejectment to recover damages by way of mesne rates in the same action.

V. So the proceedings and pleadings in Ireland in ejectment for non-payment of rent seem preferable to those in England. Probably, however, the latter are found practically sufficient, such an action not being of very frequent occurrence in that country, and when it occurs, not giving rise to questions of form and technicality.

VI. So the provision in the Irish Act requiring a defendant applying for security for costs to make an affidavit of merits.

VII. So the provisions in the Irish Act respecting the joinder of causes of action accruing to husband and husband and wife (p. 6, Joint Report).

VIII. So the provisions in the Irish Act abolishing the distinction between local and transitory venues in personal actions.

6.—I. I think the provisions of the English Act, 1860, with respect to actions for dower and actions of *quare impedit* should be extended to Ireland, and the

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procedure in these actions assimilated to that in ejectment on the title.

II. So the provisions as to misjoinder of plaintiffs' (p. 6, Joint Report).

III. So the provisions in interpleader (p. 22, Joint Report).

Questions involving sums of trifling amount frequently arise on interpleader motions, which might very properly be disposed of by the Court in a summary way without the expense of an action or an issue.

7.—I have nothing to add in answer to this question.

8.—I think that the recent English rule permitting a defendant to plead in bar a defence accruing after action brought in conjunction with other defences accrued before action brought, upon the terms that the plaintiff, admitting the sufficiency of the defence after action, should be entitled to his costs, should be extended to Ireland. There seems no substantial reason why such defences should not be jointly available to a defendant.

9. I cannot say that my own experience has furnished me with any particular cases of so marked a character as to justify a statement of them in detail.

(Signed),

GEORGE A. C. MAY.

8th August, 1862.

Frederick W. M'Blain, Esq., LL.D., Barrister-at-Law.

21. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. FREDERICK WILLIAM M'BLAIN, Esq., LL.D., Barrister-at-Law.

1.—I am of opinion that the working of the present system of Common Law pleading in Ireland is, on the whole, beneficial. The abolition of special demurrers and of special forms of personal actions, the allowance of the joinder of different causes of action in the same plaint, and the consolidation (in the summons and plaint) of the old writ and declaration, are, with numerous other changes, introduced by the Irish Common Law Procedure Acts, in my judgment, solid improvements in the law.

2.—I would suggest the allowance of the modified general issue at present adopted in England, viz., the plea of "never indebted" in actions of contract, and "not guilty" in actions of tort. The system of pleading now established in Ireland, under which the defendant is "prohibited" (without leave of the Court) from traversing more than one material allegation in the plaint, leads to increased expense, and multiplication of matter on the record, and is not attended with any corresponding advantage. I would also suggest that pleas of payment and set-off, and other pleadings capable of being construed distributively, should be taken (as they are in England) distributively, pursuant to sec. 75 of the English Common Law Procedure Act, 1852.

3.—I think that the present system of practice in the Common Law Courts in Ireland, in the main, works well.

4.—The principal change which I would recommend is the entire abolition of the system of issues introduced by the Irish Common Law Procedure Act, 1853. It is my clear opinion, and, I think, also that of the profession at large, that the present practice in Ireland of framing separate issues on the pleadings, as required by that Act, is either useless or mischievous. The Judges and the Bar are embarrassed in dealing with the issues writ; in many instances, the Jury find it impossible to understand them, and inconsistent and irrelevant findings are not unfrequently the result, leading, of course, to prolonged and uncertain litigation. I would also suggest that there should be a uniformity of practice in the Common Law Courts. In several cases (*e.g.* applications for leave to plead and demur motions for security for costs, &c.,) the Superior Courts differ *inter se* in their practice—the diversity tending, as the natural consequence to the confusion and embarrassment of the practitioner.

To ground an application for leave to plead and demur, a certificate of counsel that the objections proposed to be raised by the demurrer are valid in law should be sufficient, and no affidavit from the defendant or his attorney to that effect should be required. I would further suggest that *all* pleadings should be signed by counsel, as it is unfair to impose upon the attorneys a duty in the preparation of pleadings, for the adequate discharge of which neither their previous education nor their practice can be said to have properly qualified them.

5.—I think that the following provisions of the Irish Common Law Procedure Acts now peculiar to Ireland might advantageously be extended to England:—

I. In Ireland the effect of a renewed writ to save the Statute of Limitations depends upon the renewal having been had by leave of the Court or a Judge. There should, I think, be a similar restriction in England.

II. The provision in section 40 of the Irish Common Law Procedure Act, 1853, that debts accruing due after the commencement of the action, may be pleaded in bar of the further maintenance of the action, should be extended to England.

III. Sections 143 and 144 of the Irish Common Law Procedure Act, 1853, relating to the entry of a memorandum of part payment and satisfaction on the record of judgments, might properly be extended to England.

IV. Section 167 of the Irish Common Law Procedure Act, 1853, which enables the heir or personal representative of any party, plaintiff or defendant (for the purpose of bringing error), to enter a suggestion of the death, and that he is such legal representative, might also be advantageously extended to England.

V. So also those provisions of the Irish Act which abolish special forms of personal actions, and enact that all such actions shall be commenced by a writ of summons and plaint, that is, by a proceeding which combines the writ and declaration now used in England.

VI. So also the salutary provision contained in section 52 of the Irish Act, that no order for security for costs shall be made by reason of the plaintiff being out of the jurisdiction, unless upon a satisfactory affidavit that the defendant has a defence upon the merits.

VII. So also the provision contained in section 139 of the same Act, that a plaintiff or defendant arrested under a *ca. sa.* shall be entitled to his discharge from such arrest on payment or tender to the opposite party or his attorney, or to the sheriff or gaoler in whose custody such person may be, of the amount directed to be levied by the writ.

VIII. So also section 89 of the Common Law Procedure Act, 1856, which gives the Court power to order temporary bars to be waived in all cases where a Court of Equity would give the like relief.

6.—I am of opinion that the following provisions of the English Common Law Procedure Acts now peculiar to England might be advantageously extended to Ireland:—

I. Section 75 of the Common Law Procedure Act, 1852, providing that pleas of payment and set-off, and all other pleadings capable of being construed distributively, shall be taken distributively.

II. Section 60 of the Common Law Procedure Act, 1854, providing that a judgment creditor may apply for an order to examine orally the judgment debtor as to any debts owing to him, before a Master or other person appointed by the Court or Judge.

III. Section 19 of the Common Law Procedure Act, 1860, providing that the joinder of too many plaintiffs shall not be fatal, and that judgment may be given in favour of the plaintiffs, or of one or more of them. So also the connected sections 20 and 21.

IV. Sections 12–18 of the Common Law Procedure Act, 1860, as to interpleader proceedings.

V. Section 2 of the same Act enabling the Court or a Judge to give relief against forfeiture for not insuring against fire.

VI. Sections 28–31 of the same Act, relating to garnishee proceedings; and sections 32, 33, as to writs of mandamus and injunction.

7.—The following parts of the law and practice of the Superior Courts of Common Law peculiar to Ire-

land, might, in my opinion, also be advantageously extended to England:—

I. The provision contained in section 31 of the 35 Geo. III., c. 30 (Ir.), that neither the arrest nor the detainer of a debtor under a *ca. sa.*, nor his discharge with the assent of the creditor, shall operate as a satisfaction of the debt; and that the property of the debtor shall, notwithstanding, still remain liable to the creditor.

II. The practice in Ireland of leaving it to the discretion of the pleader to insert one or more counts or statements of the cause of action in the plaint, is, I think, more advantageous than the English practice, which ordinarily restricts the pleader, under like circumstances, to the use of one count.

III. In Ireland, by the 196th General Order, 1854, assignments of error must be signed by counsel. This practice should also, I think, be extended to England, where, at present, the signature of counsel to pleadings in error is not required.

8.—I think that section 17 of the 3 & 4 Wm. IV., c. 42, which empowers the Court or a Judge in England to order any action depending in the Superior Courts (where the sum sought to be recovered does not exceed £20) to be tried before the Sheriff of the County where the action is brought, or any Judge of any Court of Record for the recovery of debt in such county, might advantageously be extended to Ireland. I think, also, that the English rule (II. T., 1853), which requires every writ to be indorsed with the name and abode of the attorney suing out the same, or with a memorandum that the writ has been sued out by the plaintiff or defendant in person, should be extended to Ireland. I would further suggest that, in accordance with the English practice, a Judge should be required to sit in chamber every day (out of term) to dispose of chamber motions, instead of twice in the week as at present. The interests of the suitors and the convenience of the profession would be consulted by a change in this respect, which can hardly be considered to impose a very unreasonable burden on our Judges.

9.—I have reason to know that Juries have often been more embarrassed with the multifarious issues raised on the record, than with any difficulty as to the merits of the case which they had to try; and in such instances it is not to be wondered that they should cut the Gordian knot by resolving all the issues indiscriminately in favour of the party whom they consider entitled to the verdict. I repeat that the system of issues established by the Common Law Procedure Act, 1853, has not, in my opinion, worked advantageously.

Pleadings which have not been prepared by counsel, have often come before me with some apparently slight but really substantial defect in their frame, the correction of which is not unfrequently attended with loss and delay to the suitor. I think, as already suggested, that it would only be just to the solicitors to relieve them from the responsibility of the preparation of any pleadings, and with that view to require that all such should be signed by counsel.

(Signed), F. W. M'BLAIN.

2nd August, 1862.

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22. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. MICHAEL HARRISON, Esq., Barrister-at-Law.

1, 2.—I am of opinion that the present system of Common Law pleading in Ireland is open to great improvement, and I do not think that the simplicity and saving of expense which was anticipated has followed from its introduction. The privilege of multiplying counts founded on the same cause of action is frequently abused, and the want of a defence in the nature of a general traverse, similar to the general issue in England, encourages a multiplicity of special defences, which lead to great expense, and frequently to considerable embarrassment.

The change which I would suggest is to assimilate the system of pleading in Ireland with that which exists in England. The *general* law in both countries is the same, and I never could see why a different mode of procedure should prevail. The action of ejectment may, perhaps, form an exception, as the relation of landlord and tenant is so different in the two countries; but even in this instance a similar system of pleading might, I think, be adopted in England and Ireland; and in other cases it would be simple to assimilate the procedure in both countries. One great advantage of this would be, that in Ireland we should have the benefit of the English decisions on pleading and practice points, the value of which is at present greatly diminished by the fact that a different procedure exists in the two countries; but, independently of this, I think, as a general rule, where the law is the same the procedure should be identical, especially when there is the same ultimate Court of Appeal for both countries.

3, 4.—The present system of Common Law practice in Ireland, I think, works well. I would, however, suggest that the chamber sittings out of term should be increased, particularly in the vacations after Hilary and Trinity terms, when it would be a great advantage if a Judge were to sit daily for chamber business connected with the three Law Courts. At present a trial is frequently lost if an embarrassing defence is filed, or an order for double pleas is required in the interval between two chamber sittings. I would also respectfully suggest, that when a difference of opinion on a point of practice arises between any of the Courts, some course should be adopted to obtain an unanimity of decision. It now frequently happens that a Judge of one Court (*e.g.* the Queen's Bench), when sitting in chamber, has to decide differently on similar motions, according to the Court in which the respective actions may be pending.

5, 7.—I think in the following points the Irish system is preferable to the English, and might be extended with advantage to England:—

I. The necessity for an affidavit of merits in obtaining an order for security for costs.

II. The more extensive power which is given to the Master of the Court in Ireland in the assessment of damages.

III. The power of entering a memorandum of part payment of a judgment; and

IV. The power of the Common Law Courts to order that temporary bars in ejectment shall be waived.

6, 8.—I have already said that I am in favour of an assimilation of the pleading and practice in England and Ireland as far as same is practicable, and where there is not a radical difference between the laws of the two countries. In the following points, in particular, I think the English system preferable:—

I. The power of pleading the general issue.

II. That the pleadings themselves eliminate the issue, without the necessity of an issue being settled afterwards upon the pleadings.

III. That pleadings subsequent to the plea or defence can be traversed or pleaded to, and a demurrer filed thereto at the same time.

IV. That a smaller sum than the penalty of a bond can be paid into court.

V. That judgment in default in not proceeding to trial can be obtained in a shorter time in England than in Ireland.

VI. That more extensive relief can be obtained on interpleader motions in England than in Ireland.

VII. That a debtor on a motion to attach a debt may be examined orally as to debts owing to him.

VIII. That it is unnecessary to publish any notice of issuing a writ against a corporation.

9.—The answers which I have given above are founded on my own actual experience. I could mention instances in support of the views therein advanced, but I fear the details which would necessarily be gone into of the facts, &c., connected with each case, would extend my replies much beyond their legitimate length.

(Signed), MICHAEL HARRISON.

August, 15, 1862.

Common Law.

23. Answers to Questions on Common Law Practice and Procedure. Michael Morris, Esq., Barrister-at-Law.

Answers as to Practice and Procedure.

Michael Morris, Esq., Barrister-at-Law.

I had very little experience of the working of the old system of Common Law Pleading, as shortly after I joined the profession many of its absurdities were swept away by the "Process and Practice Act," and a radical change effected by the "Common Law Procedure Act," 1853. Judging, however, from the decisions on points of pleading, I have felt amazed how such a system continued so long to exist, and I am decidedly favourable to the "Common Law Procedure Act," subject to some alterations for which there is a general desire in the profession.

Assimilation of Pleading and Procedure in Ireland to that of England.

I am very strongly of opinion, that the system of procedure and pleading in Ireland should be assimilated to the system decided on for England. The ultimate tribunal consists of English judges, before whom cases, on appeal, are argued by English lawyers, all of whom are unacquainted with the differences existing between the procedure of the two countries, and who are often ready to solve their difficulties by ridicule of the management of Irish suits and self-complacent sarcasm against the Irish lawyers and judges. Again, English decisions would more effectually afford a check on the too fatal facility of deciding questions of pleading and procedure, by reference to the personal disqualifications of one or other of the litigants, or by that never-failing resort, "a common-sense view."

Plaint.

I consider the composite writ and declaration called a plaint is inferior to the English system of a writ, merely calling on the defendant to appear and answer a complaint to be afterwards formally stated by a declaration. If the case is a simple one, the defendant has the opportunity of at once settling at a small expense; if a case is to be contested, the defendant served with a writ has the opportunity of employing his attorney, and instructing him on the facts, so as to be ready on receiving the declaration to prepare a defence; the system of plaint to be pleaded to in twelve days, generally entails in every important case a motion for time to plead, which is generally granted when causing no disadvantage to the plaintiff by two courts and refused by the third.

Service.

I would suggest a power to the courts of permitting a defendant to be personally served out of the jurisdiction: it is given, I believe, to the courts in England, and is also exercised by the Courts of Equity in this country.

Venue.

I cannot too strongly or forcibly express my opinion upon the injurious results of the provision as to "venue," Irish Common Law Procedure Act, section 72; I have heard it stated, it was the concoction of some leading practitioners of both branches of the profession at Dublin Nisi Prius. I know that parties bring actions and lay their venue in Dublin, where they are not known, and which they never intend to proceed with, if the defendant, escaping the special demurrers to a motion to have the case tried in the vicinity, meets the capricious views entertained of the words "more conveniently and properly tried." A defendant cannot, in the very plainest case for so doing, apply to change the venue until after his defence is filed, often not until after notice of trial is served. Possibly, the defendant's affidavit has not been revised by counsel, nor the stereotyped statements introduced, which various cases have decided to be indispensable. Perhaps a hardy plaintiff meets the defendant's case by a counter affidavit, that necessary witnesses are resident at the venue selected, the audacity of which assertion many judges will not question or consider; then the usual platitudes of counsel, of plaintiff's statutable right to select any absurd venue; and, finally, a decision often on very fanciful reasons. The plaintiff, at the worst, has his costs in the cause, even when the motion of defendant succeeds; and I have known venues deliberately selected to drive the defendant to a motion to change, thus mulcting him with costs.

Number of Counts in Plaint.

I would suggest, in the next place, some modification in the power of a plaintiff reiterating in different counts the very same cause of action. The Common Pleas decided in "Harrison *v.* Lynch," that a multiplicity of counts was allowable; it seems the more remarkable that the plaintiff should have the power of ringing the changes of his cause of action, while the defendant is so strictly confined in his defence, and it leads to a perplexing mass of pleadings and issues.

Pleas.

The abolition of the right to plead "the general issue," and the substitution of special defences in all cases is, in my opinion, a very injurious alteration. It has been decided, that a defendant cannot plead to an action for malicious prosecution, that "he did not commit the acts complained of maliciously," and that such a defence open in England under a plea of "not guilty," must be split into two defences, thereby leading in so many cases to piles of useless pleadings and issues, to multitudinous hair-splitting motions which will be hereafter regarded as the worthy successors of the learned arguments for the insertion of a "whereas" or the omission of a "contra pacem." The English rules of Hilary Term, 1853, guard against too much latitude for the general issue, and protect the plaintiff from any surprise.

Payment into Court.

I consider that a defendant should be allowed in all actions, to lodge money in court in discharge of the action.

Pleas of Payment and Set Off.

Pleas of payment and set off should be taken distributively, as, I believe, they are in England. For want of this reasonable provision there is often great difficulty in pleading to actions on matters of account.

Leave to Plead Double.

I consider nothing can be worse than the present system of obtaining liberty to plead double. There is no definite or fixed rule; but, on the contrary, a mode is eagerly sought of escaping from certain members of the Bench, who appear to consider that an unfortunate defendant is to be as confined in his defence as an astute judge can limit him. The compelling the defendant to make an affidavit to verify what he generally does not understand is, in my opinion, a mere farce; I consider defences should be received on the certificate of Counsel, and let a plaintiff apply to set them aside in cases where there has been abuse.

Demurrers.

In all cases where a party takes issue and demurs to the same pleading, I consider the demurrer should be first disposed of, there is no general rule on the point; a recent remarkable case, "Lavelle *v.* Oranmore," well exemplifies the useless expenditure of money on the trial of an "Issue in fact," before the "Issue in Law."

Uniformity of Practice in the Courts.

It is strange that such a want of uniformity in practice should exist in the three courts of law; the familiar instances of motions for "security for costs," well exemplifies this studied dissimilarity. In the Exchequer, a motion is carried upon an affidavit which would not be held to be correct in the Queen's Bench and Common Pleas, and *vice versa*. I do not mention other instances, which lead to the rather amusing question sometimes propounded by a judge sitting in chamber, viz., "of what court am I now a Judge?"

Costs.

The present provisions on the subject of costs are contained in the Common Law Procedure Act, 1853, sections 126 and 243; and Common Law Procedure Act, 1856, section 97; a mere reference to these sections will at once show in what a confused and embarrassing position the subject is. I would suggest that a new enactment, after repealing all the former ones on the subject should run thus:—"That in all actions of contract cognizable in the Civil Bill Court, wherein the plaintiff shall recover less than £20, and in all actions of tort similarly cognizable, less than £5, it shall be lawful for the judge who tried the action, if he shall think fit so to do, upon the application of the defendant, to certify that the plaintiff in such action shall not recover more costs than the amount recovered in said action. Provided that in actions of slander, the plaintiff shall in no case be entitled to any costs unless he shall recover over forty shillings damages." Prima facie, a plaintiff who succeeds should be indemnified, and a defendant punished in costs; and such being the rule, and a sensible one, when it is to be departed from, the judge should be active in such exceptional cases; and, in my opinion, the certificate should be a disqualifying one, and not as at present, a qualifying one; from the difference in the relative wealth, modes of dealing, and constitution of inferior courts in England and Ireland, no similar rule can be, or ought to be established for both countries; and deriving a pretty considerable experience from having practised at one time in the Civil Bill Courts, from presiding for some time past in one, and from my professional experience in the Superior Courts, I am strongly of opinion, the modification as to costs I suggest would sufficiently discourage improper litigation in the Superior Courts, and provide a reasonable check for any abuse.

(Signed), MICHAEL MORRIS.

November 1st, 1862.

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24. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. JAMES MURPHY, Esq., Barrister-at-Law.

1, 3.—In reply to questions 1 and 3, so far as my experience enables me to form an opinion on the subjects referred to, the present system of pleading and practice in Ireland is a very great improvement on that which prevailed previous to 1853, and the obvious tendency of the present system is to get rid of mere legal tricks and fictions, and have substantial justice administered at less expense than it could be obtained under former system of pleading and practice.

The present system is capable of improvement in many respects; and I respectfully suggest some alterations, as to which my opinion is fortified by that of the profession generally in Ireland.

2, 4.—In reply to questions 2 and 4, I would in the first place suggest that an error was committed in allowing plaintiffs in all cases to lay the venue in any place they chose. The difficulty at present in changing the venue from the place where plaintiff has laid it to the place where cause of action arose, and where all parties reside, is very great. Defendant is invariably met with arguments, that plaintiff is not (on slight grounds) to be deprived of right given to him by statute; that convenience is to be estimated by expense, which can be calculated by the railway fares, and amounts to so trifling a sum that the Court should not regard it; and that plaintiff would be delayed if venue was changed. These arguments generally prevail; and in my opinion the practice of laying the venue in a distant locality has become, in many cases, a real persecution; and I feel satisfied that the facility afforded in having a trial far away from the county where parties reside, multiplies a class of actions which should never be brought, and would never be brought in the assize town, and before a jury of the county. The practice in England in this respect is much better than that in Ireland. The old practice of allowing venues to be changed on the common affidavit was, in my opinion, a very salutary one.

I would also suggest that plaintiff should state in one count each separate cause of action. The multiplication of counts for the one cause of action I consider an abuse of the present system in Ireland, and is resorted to merely to increase costs. A very salutary check is given to this practice in England by the rules referred to at page 47 of Mr. Holland's Report. The full and ample powers of amendment given to the Judge at the trial, should, if freely exercised, sufficiently protect plaintiff and defendant from defeat by a mere slip or oversight, and would bring forward that which parties really intended to try. The English system as to pleas I think better than that in Ireland. The limited general issue is very desirable, and saves, in many cases, great prolixity of pleading. Prolixity is further checked by the rules in England, as to several pleas founded on same ground of defence (vide page 48 of Mr. Holland's Report.) I think the Bench and Bar are unanimous as to abolition of issues introduced by the Irish Common Law Procedure Act, 1853.

Those issues in many cases defeat justice, cause great expense, and I have never heard any member of the profession point out any benefit that suitors derived from them. The English practice as to defences, replications, &c., is considered much better.

5.—Writs are issued in Ireland from the different courts in regular rotation. The writ and declaration are one and the same. Also appearance and defence are one and the same. These provisions of the Irish Common Law Procedure Act, appear to be an improvement on the English practice.

6.—The provisions as to service of parties out of the jurisdiction (more extensive than that in Ireland), and as to venue in actions, joinder of plaintiff in all actions. The system of pleading above referred to, and the additional powers given to the court or Judge with respect to attachment of debts (Joint Rep. p. 19.), and in interpleader proceedings (Joint Rep. p. 21.) should, in my opinion, and that of all practitioners to whom I have spoken on the subject, be extended to Ireland.

7, 8.—In the answers above given to questions 5 and 6, I have put forward suggestions in reply to questions 7 and 8.

(Signed), JAMES MURPHY.

16th August, 1862.

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25. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. P. J. M'KENNA, Esq., Barrister-at-Law.

I am of opinion that on the whole the present system of practice and pleading (Common Law) in Ireland, works well and satisfactorily; but would wish to state a few points in which I think some alterations and amendments would be desirable. I am strongly opposed to lightly or inconsiderately meddling with laws, or known and tried systems of legal procedure; and I can conceive nothing more mischievous than a meddling spirit of legislation, most frequently shown by persons incompetent, from want of professional knowledge, to interfere in such matters. No words can be used in legislating which will not admit of doubtful construction,

Common Law. Answers as to Practice and Procedure. P. J. M'Kenna, Esq., Barrister-at-Law.

and the most useless and expensive litigation is frequently for the mere purpose of obtaining from the Courts constructions on doubtful passages in Acts of Parliament. Nothing can be more objectionable than the introduction of changes in the law upon light and insufficient grounds—rushing from an existing system, which may present some inconvenience in points requiring amendment, to unknown evils, and that uncertainty as to what the law may be, which is the evil of legislation the most carefully to be guarded against.

I have gone carefully through the several provisions of the Acts in England and Ireland relating to the course of practice and pleading in the Common Law Courts, and with the few exceptions which I shall hereafter state, I think that, with advantage, the English might be assimilated to the Irish procedure. It would take too much time, and perhaps, unnecessarily, to go *seriatim* through the several points in which the English and Irish systems differ, but I am quite prepared to assign my reasons for saying that, with the exceptions afterstated, the adoption of the Irish would be an improvement on the English procedure.

The amendments in the Irish procedure which might with advantage be adopted from the English, are, in my opinion—1st, the provisions as to view juries; 2nd, the more extensive power of attaching debts, and regulating the proceedings in such cases; 3rd, the more extensive powers in interpleader cases, given to the English Courts; 4th, the powers given by the Common Law Procedure Act, 1850, sec. 2 (English), to Courts of Law to relieve against a forfeiture by violation of covenants to insure; 5th, the powers given to Courts of Law in ejectments by mortgagee against mortgagor, to compel mortgagee to reconvey the mortgaged premises, and deliver up the title-deeds, in case the mortgagor should bring into Court the mortgage money, interest, and costs.

As I entertain a very decided opinion that the procedures of the two countries should be assimilated in every respect, it is not necessary for me to answer *seriatim* the several queries sent to me.

With regard to additional amendments, which might be made in such assimilated procedure, I am not now prepared to offer further suggestions than the following:

1st. That power should be given to Courts of Law to direct, under special circumstances, that defendants might be served out of the jurisdiction.

2nd. That wider powers of attaching moneys due to debtors should be given to the Courts of Law, and that a discretion should be given to the Courts of Law to charge contingent interests, and amongst others, distributive shares of the assets of an intestate.

I have known of several cases in which the greatest, and sometimes insuperable difficulty, has been found in obtaining a judgment against a person resident out of the jurisdiction; and in a recent case on which I advised, the want of more extended powers, such as I have lastly suggested, was manifested.

A judgment creditor obtained information that his debtor, who was residing in America, was entitled to a considerable sum as his share of the assets of a relative who had died intestate. Offers of a composition had been made by the debtor, who stated that he had forwarded a power of attorney to a solicitor to get this money for him from the administrator; and I had to advise that the judgment creditor could not get a garnishee order unless he could ascertain the time when the administrator paid the money to the solicitor, when, if the money lay in the solicitor's hands long enough to permit of a garnishee order being obtained, the judgment creditor might attach the money. In this case if a judgment had not been obtained, the creditor would be utterly without remedy, even if there were debts due to his debtor to any amount. The result of the law as at present is:—If a man owes me £100, and leaves the country before I institute proceedings, if he have not real property in the country, and an agent or manager of this property, I have no person on whom to substitute service, and there might be £10,000 due to my debtor by persons in this country being paid off from time to time, and I would be completely without a remedy; indeed, according to the present practice, I think it is very doubtful whether I should have any remedy in the case of my debtor having property in this country, if the tenant or tenants should forward their rent directly to the debtor, without the intervention of an agent on whom to substitute service, according to the provisions of the Common Law Procedure Act.

The only other matter on which I would observe is a consideration of the advisability of reducing the number of circuits in this country. I have not sufficiently considered the subject to offer a deliberate opinion; I rather suggest for the consideration of the Commissioners. I am inclined to think, however, that such a change might be adopted with advantage to the public interests, and to the convenience of the bench and bar.

I would wish to add that there are some provisions in the Irish Common Law Procedure Act (for instance, those with regard to settling issues) which I consider useless. I have, however, such an objection to experimental legislation, that unless to remedy a positive and well-ascertained evil or mischief, I would decline to meddle with a practice known and ascertained.

(Signed), P. J. M'Kenna.

William M. Johnson, Esq., Barrister-at-Law.

26. Answers to Questions on Common Law Practice and Procedure. William M. Johnson, Esq., Barrister-at-law.

1. If the present system of pleading is fairly worked, every case may be tried upon its merits, and justice can seldom be defeated by blunders in the pleading, or by mere technicality.

2. I would suggest—I. That more than one count on the same cause of action ought not to be allowed without leave of a Judge. II. That the general issue in the modified form in which it exists in England ought to be extended to Ireland. III. That the system of issues ought to be abolished.

3. It is capable of improvement.

4. I would suggest—I. That a Judge ought to sit in Chamber daily (or at least three times a-week) out of term, except during the long vacation. II. That if the general issue is not extended to Ireland (as above suggested), several pleas, which together amount to such general issue, ought to be pleadable without the necessity of applying to a Judge by motion for leave to plead several defences. III. That venues in actions concerning the realty ought to be local. IV. That in every case of issue in fact and demurrer, the demurrer ought to be decided before the issue in fact is tried. V. That several pleas ought to be permitted on certificate of counsel without affidavit. VI. That there ought to be perfect unanimity in the practice of the three Law Courts. VII. That the Judge's Registrars, or other public officers appointed for the purpose, ought to be short-hand writers, and to take the evidence in all criminal and Nisi Prius trials, and such evidence ought to be duly transcribed and preserved.

5. I have not had any opportunity of practically considering this query.

6. My position at the bar does not warrant me in offering to Her Majesty's Commissioners merely hypothetical opinions. My answers are limited to matters within my own experience in practice.

7. I have not had any opportunity of practically considering this query.

8. It would be of the greatest possible advantage to the community at large if there was a uniform system of law and practice in England and Ireland, the principles of the law being the same in both countries.

9. *Illustrating views taken in previous answers:*—As to 2nd query:—I. I have occasionally, though

no means frequently, met with instances in my own practice of a cause of action varied needlessly in several counts, involving the necessity of several defences and numerous issues, causing prolixity in the record, and confusion at the trial.

II. The want of a modified general issue causes increased length of pleading and increased expense—*e.g.*, in slander and libel, the general issue in England puts in issue the publication and the defamatory sense. In Ireland two separate defences are necessary for this purpose, and leave to plead them must be obtained on motion of counsel. A similar observation applies to many cases both in tort and contract, the above instance of slander and libel being one of the simplest examples.

III. Judges at the trial are slow to vary or add to issues framed in terms before the trial; and, consequently, it is a constant practice for Judges to submit several questions to the jury; and having got their findings on such questions, the findings on the issues are moulded accordingly. I have not in my own practice known a miscarriage from the present system of issues; but I have often found it inconvenient and unnecessary.

As to 4th query:—I. According to the present practice, a Judge sits in Chamber only twice in each week out of term; the consequence (especially shortly before circuit) is, that, owing to the press of business on those days, counsel of junior standing often lose the whole day waiting for an opportunity to move; and especially when motions on notice are not (as is the practice of some Judges), postponed until the motions of course are disposed of. In practice the inconvenience arising from this state of things is mitigated by the Judge sitting on the following day, and until all the motions are disposed of.

III. The rule now, is, that a plaintiff has a statutory *right* to lay his venue where he pleases, and so many elements enter into the question of convenience that it is sometimes difficult to satisfy the Court that the preponderance of convenience is elsewhere. At the last Cork Assizes (summer, 1862), an action (Barry *v.* Agar) was tried. It was an action for breach of covenant to repair contained in a lease. The plaintiff's case having been partly heard, the trial was adjourned for a day to dispose of some criminal business. It was then suggested that the jury should view the premises; they did so, and found for the defendant. Until the trial, it did not occur to either party that a view by the jury was desirable or necessary; and had the venue been laid, and the action tried in Dublin, as was originally intended, owing to the conflicting evidence, the result might, and very possibly would have been different.

IV. Lee *v.* The Cork and Bandon Railway Company, is an action in the Exchequer for breach of contract in not conveying the plaintiff from Cork to Bandon, and for injuries arising from the negligence of the defendants. The main defence to each count is unavoidable accident, concisely stating the facts. The plaintiff by leave has demurred to each of these defences, and also joined issue in fact on them, and the Court refused to order that the demurrers should be first decided. The trial took place before the Right Honourable the Chief Baron, at the sittings in Dublin, after Trinity Term, 1862, and a verdict was found for the defendants. Should the demurrer now be decided for the plaintiff, the trial (which was at a heavy cost to the defendants), might possibly go for nothing, and the costs, at all events, would be seriously affected: because amendments in pleading are rarely if ever allowed after trial, while if the demurrer had been decided before the issues in fact, had been tried, the pleadings might (if necessary) have been amended, and the trial have taken place on the amended pleadings without danger of miscarriage. In the above case, however, a new trial can hardly be necessary in any event, owing to the fact, that the Chief Baron took the findings of the jury in fact on every material question which could possibly arise, even if the pleadings were framed as required by the demurrer—all such findings, in fact, being in favour of the defendants.

The above case is also illustrative of a matter deserving attention. The accident arose from the breaking down of part of the engine; no life was lost, and no very material injury sustained by any person. Four actions were brought against the same defendants, in the same Court, by the same attorney, at the same time, in the same words, and in reference to the same accident; but at suit of four different plaintiffs, all of whom were, I believe, cattle dealers. There were four separate records, and four separate demurrers, all in the same terms, except the plaintiff's names; but, of course, the amount of damage sustained by each plaintiff may be different. The Court ordered that all the demurrers should abide the result of the argument of one demurrer, but stated they had no jurisdiction to consolidate the actions in any manner. The four cases were listed for trial, but there was only time to try the first case (Lee *v.* The Cork and Bandon Railway Company) before circuit. The defendants exposed the whole of their case, much of which was scientific evidence. The jury found for the defendants. The three remaining cases may still be tried, and each successive plaintiff may bring forward additional scientific evidence to endeavour to meet the defendants' evidence with which he is now fully acquainted, and the same facts, with the same counsel and solicitors, may be tried over four times by four different juries.

V. An affidavit is always required by a Judge on motion to plead several defences, when any of such defences are in confession and avoidance, and often even when the defences are merely traverses. When the client lives in the country, much time is often lost in obtaining such affidavit, and the affidavit is not unfrequently framed in the formal words of the 57th section of the Common Law Procedure Act, 1853 (16 and 17 Vic. c. 113), which an uneducated client rarely fully understands when swearing. When this is the case, the affidavit is not much better than a form; no object is gained by it; but on the contrary time is lost, and additional expense incurred.

VI. *e.g.* The form of affidavit for security for costs in the Exchequer differs from that in the other Courts. A false and sham plea has been set aside on motion in the Queen's Bench (Stokes *v.* Hartnett, 10 Ir. C. L. Rep., App. xx.), but not in the Exchequer (O'Donnell *v.* Reilly, 11 Ir. C. L. Rep., 329).

(Signed), W. M. JOHNSON.

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27. ANSWERS to QUESTIONS on COMMON LAW PRACTICE and PROCEDURE. WILLIAM O'BRIEN, Esq., Barrister-at-Law.

According to my experience the present system of Common Law pleading in the main works well, and is conformable to common sense, whatever defects there may be in details; and I think the success of the system would be promoted by a still more enlarged application of the power of amendment at all stages.

I think the settlement of issues and the abstract of issues ought to be abolished, as being useless and leading to expense, and because the former is not practically subject to appeal. The issue adopted in the Common Pleas—"whether the pleading is true in substance," which, notwithstanding much criticism in the other Courts, has been generally used at the bar in the case of pleadings special in their nature—shows the sense entertained of the convenience of a party not being tied down at the trial by the hasty selection of a fact as the matter to be tried, or verbal strictness in the statement of it. But this issue means no more than what the law declares, namely, that the pleadings contain the issue in fact; and where the issue is in a special form, and a repetition of the pleading in terms, I can see no use of it, except for the purpose of preserving a record of

Common Law. — Answers as to Practice and Procedure. — William O'Brien, Esq., Barrister-at-Law.

what the jury in fact have found, which in reality, in my experience, it is not, the jury as a general rule finding for the plaintiff or defendant without much consideration of the special issues. If the system be retained, I would suggest that the Judge should have power of amending the issue, even in the face of the apparent contradiction that the question to be tried should be amended after the production and preparation of the evidence for the trial of it.

2. I think the present mode of proceeding with respect to double pleading an abuse, and I would, in the first place, give in every case both of tort and contract a general issue with a defined limited effect, as in the English rules, with or without any other defence, and not merely in cases of contract with the defences allowed by the 58th section of the Procedure Act, 1853. In the next place, I would allow defences inherent in the transaction which gives rise to the action, whether of contract or tort—in the making of the contract or doing of the wrong—to be pleaded on a strict and *bonâ fide* certificate of counsel, the present affidavit being an idle form, and morally injurious. All extrinsic and subsequent defences I would require to be verified.

I think but one count should be allowed in every case of tort, and perhaps even of contract, with, however, the most enlarged power of amendment, in order to prevent the failure of justice through such a rule. I have known in my own practice nine counts on one identical trespass; I have known seven counts in another case on the same cause of action, and twenty-eight defences; and in another case four counts for the same wrong, and twenty defences, and as many issues; all the questions in the last case being strictly reducible to two.

I think every kind of case ought to be triable in the Consolidated Court, seeing no distinction in principle whether the same Judge tries cases in Dublin and on circuit.

I think venue motions are in many cases a great abuse, and that there ought to be a rule, at least in defined classes of actions, restoring, with a certain specified effect, the influence of the fact in such cases where the cause of action has arisen, because the means of evidence are naturally found in the locality of a transaction.

I think money ought to be payable into Court in every action, retaining the exception for the sake of morality in cases of seduction and breach of marriage promise. If a party appeals to a jury to measure the injury done to him by a pecuniary standard it seems an unintelligible refinement not to allow the opposite party to measure it beforehand, so as to affect the serious question to him of costs.

I think the draft of exceptions ought to be abolished; exceptions taken in the short form of the Act being, in my opinion, practically sufficient.

I think the differences of practice introduced into the different Courts, notwithstanding the declaration in the first section of the Procedure Act, a cause of embarrassment and expense.

I think the judicial functions of the Masters of the Common Law Courts ought to be abolished, and damages in all unliquidated demands ought to be assessed before a Judge without a special order.

I would suggest that certain sections of the English Procedure Act of 1860, containing provisions not already made in Irish enactments, should be extended to this country, such as sections 15, 16, and 17 of the interpleader clauses and the sections under the head of "Procedure and Practice" to 34 inclusive, repealing so much of the sections of both Irish Acts relative to costs as is inconsistent with the last-mentioned section.

But instead of any partial assimilation I would respectfully suggest that there is no sufficient obstacle in the way of having a completely uniform code of pleading and practice for the United Kingdom, both Irish Procedure Acts being repealed, and the three English enactments being extended to this country.

I think the appearance and writ as distinct from the declaration and plea in England, ought to be abolished, and the Irish system of having the process and pleading together, as in the summons and plaint, ought to be substituted.

(Signed,) WILLIAM O'BRIEN.

20th August, 1862.

5. ANSWERS of SOCIETIES* of ATTORNEYS and SOLICITORS in IRELAND to QUESTIONS as to COMMON LAW PRACTICE and PROCEDURE in CIRCULAR, APPENDIX, PART I., 3, *supra*.

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1. Council of Incorporated Society of Attorneys and Solicitors, Ireland, ... 130
2. Committee of Northern Law Club, ... 131

The Council of the Incorporated Society of Attorneys and Solicitors in Ireland.

1. OBSERVATIONS of the COUNCIL of the INCORPORATED SOCIETY of the ATTORNEYS and SOLICITORS in IRELAND on the QUERIES of the ENGLISH and IRISH COURTS of LAW and CHANCERY COMMISSION in relation to the working of the present system of PLEADING and PRACTICE in the COURTS of COMMON LAW in IRELAND.

Generally speaking we approve of the working of the present system of Law pleading, subject to the observations hereinafter contained.

Pleading and Practice.

That the venue should not be inserted in the writ of summons and plaint when issued, nor until the writ is being filed, when it should be inserted by the Clerk of Pleadings in the margin of the writ, as directed by the plaintiff's attorney.

That it should be sufficient to state substantially each cause of action in one count without the necessity, as at present, of stating each cause in several counts, varying in a technical difference only, and that the defendant should, in like manner, be limited to state his defence in one paragraph only, unless a Judge should think several counts and several defences proper for determining the subject in controversy between the parties, as in England, and make an order for that purpose.

That in the settling of the issues those only should be retained that are material and pertinent to the main question or questions to be decided between the parties, as both the Judge and Jury are now frequently embarrassed by a number of collateral issues bearing on the same point; we think, however, that the Judge should have jurisdiction at the trial to send any issue to the Jury which he might consider necessary, in order to a just determination of the matter in dispute between the parties.

That with regard to Juries for the County and City of Dublin, panels of Special and Record Juries for each Court should be publicly balloted for in the Master's office of the Court of Queen's Bench, upon a day to be fixed for that purpose before the first day of each term.

That writs of *ca sa* be so framed that a sheriff under *ca sa* should be authorized to detain the defendant until the sum marked at the foot of the writ and his fees shall have been paid.

* In addition to the bodies who have answered, the Circular was also sent to the Dublin Law Club and the Cork Law Society.

That we think the mode adopted, of dividing the gross costs in cases under £20, is manifestly unfair, as the outlay in each case is the same; the entire outlay should be allowed, and the division should only be of the attorney's fees.

Satisfaction of Judgments.

That every entry of satisfaction of a judgment on the roll of the Court shall be signed by an attorney.

Interest on Judgments.

We consider the English practice preferable as to cases in the Court of Error, with respect to the allowance of interest for delay of execution, whether the judgment is or is not affirmed.—*Vide Jellett and Holland's Statement, page* 21.

Interpleader.

We think the English practice with respect to the power of ordering the sale of goods seized should be adopted.—*Vide Jellett and Holland's Statement, page* 22.

Power to Court to decide summarily in certain cases.

The English practice with respect to questions of law only is preferable, but, as regards questions of fact, we prefer the Irish practice, requiring the consent of both parties.

Ejectment for Non-payment of Rent, where no sufficient Distress.

We recommend that the provision for bringing an ejectment (when no sufficient distress on the premises) as in England be adopted.—*Vide Jellett and Holland's Statement, pages* 26 *and* 27.

Endorsement on Writ of Ejectment—Costs.

We consider that the endorsement on the writ of summons and plaint in ejectment for non-payment of rent, by which the costs are limited to £1 10*s.* (if rent and costs be paid within ten days from service) should be discontinued, inasmuch as that sum is manifestly insufficient, and in almost all cases would not pay the mere outlay for serving the writ. The regular costs, according to the schedule of fees (subject to taxation), should be allowed. The endorsement, in other respects as to amount and time when debt became due, should be continued.

Service of Ejectment.

We beg to call attention to the 23rd & 24th Vic. c. 154, sec. 55, under which ejectments may be brought, and the tenant's interest wholly evicted, without notice of any kind to a mortgagee or other person interested in the preservation of the lease.

Service of Writs.

That personal service of writs of summons and plaint be dispensed with, and that it be sufficient to serve the defendant by his wife, child, or servant over the age of sixteen years, in his (defendant's) residence, which is similar to the practice in the Court of Chancery; and in order to carry out this object, we suggest that proper persons be appointed by the Courts for the purpose of such services.

Proceedings to compel Tenants to find Bail.

We think the English practice of not staying execution after verdict, without security by recognizance, should be adopted in Ireland.—*Vide Jellett and Holland's Statement, page* 30.

Fifth and Seventh Queries.

The answer to these queries we leave to our English brethren.

Officials not to be Protected from Arrest for Debt.

As to the protection from arrest for debt, it appears a monstrous abuse that an officer employed in administering the law should have protection from arrest, and set his creditors at defiance.

In the foregoing remarks and answers we have, in substance, answered the several queries, save Nos. 5 and 7 as above, and do not, therefore, consider it important to answer each in numerical order.

In conclusion, we suggest that a reduction be made in the amounts charged in law fund stamps.

By order,

EDWARD ILES,

Secretary.

Solicitors' Buildings, Four Courts,
Dublin, 19th December, 1862.

COMMON LAW.

Answers as to Practice and Procedure.

The Council of the Incorporated Society of Attorneys and Solicitors in Ireland.

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2. OBSERVATIONS of COMMITTEE of the NORTHERN LAW CLUB upon certain QUERIES submitted to them from the ENGLISH and IRISH COURTS of COMMON LAW and CHANCERY COMMISSION, pursuant to the following Resolution passed at a Meeting of Committee of said Club, held on Monday, the 21st day of July, 1862, viz.:—

Committee of the Northern Law Club.

"That a Sub-Committee, consisting of the following members, viz., James Andrews, W. E. Batwell, W. C. Cunningham, Alexander O'Rorke, Henry Seeds, and the Secretary be deputed to read and consider the Reports of Messrs. Jellett and Holland, and to return Answers to the Queries proposed by the Commission in connexion therewith, on or before the day appointed for that purpose."

1st. So far as our experience goes we think the system of Common Law pleading in Ireland has of late undergone a most desirable change, and its present simplicity greatly increases its efficiency.

2nd. One matter at present occurring to us in which a change might be judicious is as to the framing of issues of fact to be tried by a jury. We are of opinion that such issues should be as few in number, and as simple and free from technical phraseology as possible, and should contain in themselves, and without reference to the pleadings, direct and definite questions of fact upon which the finding of the jury is required.

We beg to draw attention to a clause in the recent Landlord and Tenant Act, 23 & 24 Vic. c. 154, sec. 45, whereby it is provided that service of an ejectment for non-payment of rent upon the person or persons in the actual possession of the lands as tenant or under-tenants shall only be necessary; and this may be productive of great hardship and injustice. We think that for the protection of incumbrancers upon leases sought to be evicted, some means might be devised, either by returning to the old system of serving parties having registered interests with the ejectment, or by giving them notice of a judgment in ejectment having been obtained; otherwise, by collusion between the landlord and tenant, or by the absence of the incumbrancer from the country, he may, through ignorance of the proceedings, till the time for redemption has expired, lose the amount of his charge.

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Common Law. — Answers as to Practice and Procedure. — Committee of the Northern Law Club.

3rd. We consider the present working of the system of Common Law practice in Ireland to be, upon the whole, satisfactory.

4th. One change, however, occurs to us. As the Law at present stands, if an execution be issued, a seizure of the debtor's goods must be made by the sheriff, and an actual sale had thereunder; otherwise an act of bankruptcy by the debtor would deprive the creditor of the fruits of his execution. We are of opinion that a *bona fide* seizure by the sheriff, provided the sale be had within a reasonable time, should prevail against an act of bankruptcy committed subsequent to such seizure. Instances are within our knowledge in which the present system has been a great hardship upon the debtor by reason of the hurried sale of his goods, and it generally entails serious loss to the creditor, inasmuch as due publicity is not given to the sale.

8th. Inasmuch as parties litigant residing in counties at a distance from Dublin, and especially in those containing large towns of great commercial importance, such as Antrim, Cork, and Londonderry, are obliged to lay the venue in Dublin, thereby entailing much additional expense and inconvenience, or to allow the matter to remain unsettled, at the risk of the insolvency or removal of the debtor, during the interval between the Summer Assizes in July and the Spring Assizes in March, a period of nearly eight months; we consider that the practice of holding a Winter Assize in England might be advantageously extended to Ireland and made available for civil as well as criminal cases.

We would also suggest that the practice of counsel to appear in one Court only, and confine himself to such Court, should be extended to Ireland, but we offer this remark with some diffidence, not knowing that such a question comes properly within the scope of the present Commission.

Note.—We beg further to suggest that a judgment recovered in any one of the three kingdoms against a defendant for the time being resident therein, should, upon the removal of the said defendant, or his goods, to another of said three kingdoms be, by some simple process, such as the production of an attested copy thereof, recognised by the Courts of such kingdom, and execution be issued thereon without the necessity, which at present exists, of instituting a new suit upon foot of such judgment.

Signed on behalf of the Committee of the Northern Law Club.

HUGH HYNDMAN.
Secretary.

9, Donegall-place, Belfast.

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6. CIRCULAR as to COMMON LAW PRACTICE and PROCEDURE, and as to the ESTABLISHMENTS of the COMMON LAW COURTS, addressed to the CLERKS of the RULES of the Three Superior Courts of Common Law in Ireland.

Form of Circular to Clerks of Rules.

FORM of CIRCULAR.

Law and Chancery Commission,
Four Courts, Dublin, December 10, 1862.

SIR—I am directed by Her Majesty's Commissioners for inquiry into the Superior Courts of Common Law and the Courts of Chancery in England and Ireland to forward to you a copy of the statement respecting Common Law Practice and Procedure, and the differences therein, prepared for the Commissioners by Messrs. Jellett and Holland, and to state that the Commissioners desire to receive from you any observations respecting the practice and procedure in the Common Law Courts in Ireland, and the working of the offices thereof, and any suggestions that may occur to you for their improvement, by assimilating same to the practice of the similar offices in England or otherwise; and also, any observations that may occur to you in relation to the establishments of the corresponding Courts in England and Ireland.

Your obedient servant,

(Signed), W. NEILSON HANCOCK,
Secretary.

To —— ——

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7. ANSWERS of CLERKS of RULES in IRELAND to preceding CIRCULAR, so far as relates to PRACTICE and PROCEDURE.

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1. Arthur Greene, Esq., Clerk of Rules in Court of Common Pleas, ... 132
2. Henry Yeo, Jun., Esq., Clerk of Rules in Court of Exchequer, ... 135
3. Christopher N. Duff, Esq., Clerk of Rules in Court of Queen's Bench, ... 136

Arthur Greene, Esq., Clerk of the Rules, Court of Common Pleas, Ireland.

1. ANSWERS to preceding CIRCULAR, so far as relates to COMMON LAW PRACTICE and PROCEDURE. ARTHUR GREENE, Esq., Clerk of the Rules, Court of Common Pleas, Ireland.

Forms of Actions, (vide Jellett and Holland's Statement, p. 1.)

1. Irish practice preferable, on the ground of facility of procedure. Although the joinder of actions in one suit might appear to lead to embarrassment, such is not its practical effect.

Real Actions, (vide J. and H. St., p. 1.)

2. English practice preferable, on the ground of uniformity. In Ireland, the right to dower has been greatly circumscribed by recent enactments, and actions of *quare impedit* are rare.

Writ of Summons, (vide J. and H. St., p. 2.)

3. Irish practice preferable, as the system of issuing writs by rotation necessarily equalizes the business of the Courts.

Form of Writ, (vide J. and H. St., p. 2.)

4. Irish practice preferable in dispensing with the declaration, and being, in general, more simple and expeditious. The writ is perfect in itself, giving every necessary information. The ordinary printed form, containing all required endorsements, and answering in all actions (save those under Summary Procedure on Bills of Exchange Act).

Teste, (vide J. and H. St., p. 2.)

5. The practice in both countries defective in retaining a fiction, as the sealing and dating from the Queen's Courts would be sufficient in this and all other writs.

Appearance Defendant out of jurisdiction, (vide J. and H. St., p. 3.)

6. By the Irish practice, in cases of this kind, the order to substitute service would regulate the time for taking defence.

Minors and Lunatics, (vide J. and H. St., p. 3.)

7. Irish practice preferable, on the ground of facility of procedure, no application to a Judge being required, and more time being allowed for the appointment of guardian, &c.

Service of Writs, (vide J. and H. St., p. 3.)

8. Irish practice preferable, as it prevents the possibility of any mistake, and consequent injury to a defendant in having an execution put in force against him without previous notice, by the averment on the affidavit of service of acquaintance with the person of defendant.

The form of affidavit in use would seem to imply an after, rather than a previous acquaintance: "*A. B.*, maketh oath, and saith that *he is* acquainted with the person of *C. D.*, and that," &c., &c. The foregoing requirement (in scire facias against heir and terre tenants) is attended with inconvenience.

Non-Personal Service, (vide J. and H. St., pp. 3, 4.)

9. Irish practice preferable, on the ground of facility of procedure, no application to a Judge being necessary.

Substitution of Service, Defendant out of Jurisdiction, (vide J. and H. St., p. 4.)

10. Irish practice preferable, on the same ground. It is not necessary to aver that writ came to defendant's knowledge. Service upon a known agent in Ireland, and transmission by post, is all that is required by the conditional order; however, without the most satisfactory proof of agency or privity, no order is granted (unless under very special circumstances).

Appearance, (vide J. and H. St., p. 4.)

11. Irish practice preferable, on same ground, in not requiring an appearance distinct from the defence.

Security for Costs, (vide J. and H. St., p. 5.)

12. Irish practice preferable in all its features; but plaintiff should be required to give security within a certain time, or action stand dismissed with costs (instead of being stayed, as at present); as, in default of his so doing, defendant cannot put him out of Court, or obtain the costs he has incurred; and defendant should serve with the preliminary notice (instead of with notice of motion) an affidavit of merits, as required by the respective Courts.

Declaration, (vide J. and H. St., p. 5.)

13. Irish practice preferable, as it makes the writ (when filed) the declaration.

Venue, (vide J. and H. St., p. 6.)

14. Irish practice preferable, at least for Ireland, considering the social circumstances of the country, and the power the Court has to change the venue, having regard to the balance of convenience, &c.

Signature of Counsel, (vide J. and H. St., p. 6.)

15. Irish practice preferable, as it secures uniformity of pleading, regard for precedents, and is in every way advantageous to parties litigant. No attorney should take the responsibility of advising and drafting pleadings; and were it removed, carelessness and consequent embarrassment would ensue.

Filing Pleading, (vide J. and H. St., p. 7.)

16. No pleading shall be filed during the long vacation (save under Summary Procedure on Bills of Exchange Act).

General Issue, (vide J. and H. St., p. 7.)

17. Objectionable, as also the present practice in Ireland, of setting out at length the nature of defence, which is often embarrassing and expensive. Query—might not the general issue be allowed, with a qualifying statement—as, for instance, "Defendant denying he was indebted," because "he did not accept;" "or paid the amount for which plaintiff sues;" or, "did not receive notice of dishonour," &c.

Money Payment into Court, (vide J. and H. St., p. 8.)

18. In all cases in Ireland a party ought to be at liberty to lodge money in Court, as in England, and *vice versâ*. Detinue and replevin seem peculiar to England in this respect, and scire facias and revivor to Ireland.

Proceedings of Plaintiff after Payment into Court, (vide J. and H. St., pp. 8, 9.)

19. The English practice preferable, of allowing plaintiff to sign judgment for his costs (incurred previous to lodgment), if not paid; but the Irish possesses some advantage in not allowing plaintiff to draw money lodged in Court after verdict or judgment against him. Defendants, in many cases, find it impossible to recover their costs against pauper plaintiffs.

Demurrers, (vide J. and H. St., pp. 9, 10.)

20. Irish practice preferable, on the ground of facility of procedure, no joinder in demurrer being necessary.

Particulars of Demand, (vide J. and H. St., p. 10.)

21. Irish practice preferable in all its features, on the grounds stated in Mr. Jellett's Report, with the addition that a reasonable time should be given, by statute or order, to defendant to plead after service of such particulars.

Judgments, Liquidated and Unliquidated, (vide J. and H. St., pp. 11, 12.)

22. Irish practice preferable, on the ground of facility of procedure in every respect, save that the affidavit of sum due in liquidated demands is a questionable requirement.

Writ of Trial before Sheriff, Debt under £20, (vide J. and H. St., p. 12.)

23. In similar cases the Courts in Ireland frequently recommend the matter to be disposed of by the Chairmen of Quarter Sessions, but always on consent of the parties.

Notice of Trial Continuance, (vide J. and H. St., p. 13.)

24. English practice preferable, affording facilities of procedure.

COMMON LAW.

Answers as to Practice and Procedure.

Arthur Greene, Esq., Clerk of the Rules, Court of Common Pleas, Ireland.

Costs of not Proceeding to Trial, (vide J. and H. St., p. 13.)

25. Irish practice preferable in limiting the time for obtaining the rule, staying the proceedings until costs are paid, and enabling the defendant to recover them by execution; but the practice is defective in this respect—that if the defendant be unable to recover his costs, he can neither non-suit nor put plaintiff out of Court; however, it could be remedied by adding to the rule, "that unless such costs be paid within four months, the cause should stand dismissed," &c.

Default in not Proceeding to Trial, (vide J. and H. St., p. 13.)

26. Irish practice preferable, on the ground of facility of procedure.

(In replevin cases the defendant is entitled to this rule after one term. Common Law Procedure Act (Ireland), 1856, Sect. 100).

If the rule to proceed to trial applied to abortive trials, or trials, the verdicts in which had been set aside, and if the defendant could, in all cases, enter the rule to proceed to trial, whether the plaintiff had taken the case to trial or not, it would do away with the necessity of trials by proviso, especially so if the non-suit judgment were held as effectual a bar as a verdict for defendant on trial by proviso.

Trial by Proviso, (vide J. and H. St., p. 13.)

27. The costs of taking a record to trial by proviso are considerable, as the defendant in entering the record for trial must incur the same expense as if the plaintiff were proceeding adversely, and must be prepared to proceed with his own case or meet the plaintiff, should he proceed. By the practice in Ireland the plaintiff's default is not considered established until the lapse of at least one term or assize.

Place of Trial, (vide J. and H. St., p. 14.)

28. The practice in this respect being suited to the requirements of each country, cannot be assimilated or altered with advantage.

View, (vide J. and H. St., p. 15.)

29. English practice preferable, on the ground of facility of procedure. No application to the Court or a Judge being necessary, and the expense being provided for.

Bill of Exceptions, (vide J. and H. St., p. 16.)

30. English practice preferable, on the grounds of facility of procedure. As the exceptions are only examinable in the Court of Error, the difference in practice as to signing and sealing is not of importance; but the Irish practice, which limits the time for furnishing and settling the exceptions, is desirable.

New Trial, (vide J. and H. St., p. 16.)

31. Irish practice preferable, motion being grounded on Counsel's certificate, court at once in possession of facts of case. And four sitting days in term being allowed to move for new trial, meets all cases.

Judgment, (vide J. and H. St., pp. 12, 17.)

32. Irish practice preferable, on the ground of facility of procedure. A summary of pleadings only being enrolled.

Execution in Fourteen Days, (vide J. and H. St., p. 17.)

33. English practice preferable, on the ground of uniformity. Speedy execution, or a fiat, to hold to bail, can always be obtained, in a proper case.

Execution Indorsement, (vide J. and H. St., p. 18.)

34. Irish practice preferable, being less likely to mislead by stating in mandatory part of writ the amount to be levied or paid, and the mode of payment or discharge being less likely to inflict hardship on defendant.

Satisfaction of Judgment, (vide J. and H. St., p. 18.)

35. English practice preferable, as it gives greater security against fraud, and cannot be attended with inconvenience, as a Judge can dispense with the attestation by attorney. It may, however, be stated that no known case of fraud has occurred under the Irish practice.

Attachment of Debts, (vide J. and H. St., p. 19.)

36. English practice preferable, on the ground of the extended jurisdiction the Judge possesses, especially with regard to the amount sought to be attached. In no case ought the garnishee to be called on to pay his debt at an earlier period than his creditor would have required, for instance, where rents are attached considerable hardship occurs.

Revival of Judgment, (vide J. and H. St., p. 20.)

37. Irish practice preferable, on the ground of facility of procedure, the writ being the declaration; but the English practice in allowing a plaintiff to discontinue, by quashing his writ on payment of costs is certainly an advantage.

Bail in Error, (vide J. and H. St., p. 21.)

38. Irish practice preferable, on the grounds of facility of procedure, in combining in one recognizance security to the Court of Error and House of Lords.

Interpleader, (vide J. and H. St., pp. 21, 22.)

39. English practice preferable, on account of the extended powers of the Courts and Judges.

Replevin, (vide J. and H. St., p. 22.)

40. Irish practice defective, as there is no express enactment requiring plaintiff to serve his writ, which renders the sections compelling him to file it and proceed to trial within one term after plea, perfectly nugatory.

Ejectment, (vide J. and H. St., p. 24, et seq.)

41. Irish practice preferable, as to waiving of temporary bars, recovery of mesne rates, execution of *habere*, including defendant's right to pay sheriff amount due for rent and costs.

Proceeding to compel Bail, (vide J. and H. St., p. 30.)

42. Irish practice defective, in limiting the time for defendant to find bail to six days, especially if the recognizance be acknowledged before a Judge. It would tend to public convenience if the Commissioners for taking Affidavits were empowered to take these recognizances, also those for costs, and bail at bar.

Fiat.

43. In all cases of arrest under Judge's fiat a copy of the affidavit or affidavits upon which such fiat was granted should be furnished to the defendant on his arrest, (under the present practice he has no means of ascertaining the grounds of his arrest for several days).

44. And the plaintiff should be required to serve his writ at the time, or immediately after, the arrest (within three days), and proceed to trial on the first opportunity, or judgment of non-suit for defendant, (in ordinary cases three clear terms must elapse from filing of defence). As under present practice, if defendant unable to pay the debt, or procure bail, or even if he procure bail, and have a good defence on the merits, he cannot compel the plaintiff to file, or even serve, his writ, and is, therefore, deprived of the remedy applicable to other cases, and cannot obtain his discharge for six months, if the plaint be not filed (37th General Order, 1854.)

(Signed), ARTHUR GREENE.

2. ANSWERS to preceding CIRCULAR, so far as relates to COMMON LAW PRACTICE and PROCEDURE. HENRY YEO, Jun., Esq., Clerk of the Rules, Court of Exchequer.

A sufficient time has elapsed since the passing of the several Procedure Acts in England and in Ireland to allow of the test of practical experience being applied to the working of both; and, although undoubtedly a great deal was done by the Irish Procedure Act of 1853, to simplify the general procedure of the Courts of Law, to abolish many inconvenient forms, and introduce many changes of the highest importance and benefit to the public, yet I venture to think that most persons who have a knowledge of the effect produced on the course of practice in Ireland by that statute, see reason to regret that the precedent of the English Act of 1852, in respect of the mode of commencing personal actions, the system of pleading, and other details connected therewith, was not followed for Ireland.

The plan of combining the writ and declaration in the writ of summons and plaint in Ireland,—thus requiring the party to state his cause of action fully in the first instance, although in the great majority of cases no further proceeding is taken beyond the issuing of the writ,—is attended with unnecessary complication and expense.

Again, the abolition of all technical and formal language in pleadings has in practice produced an inaccurate, confused, and verbose method of pleading, very different from that "true and succinct statement of the cause of action and defence" contemplated by the statute; and the mode of eliminating the issue between the parties, after defence without subsequent pleadings, by issues either framed by the parties or settled by a Judge, appears to me inconvenient, uncertain, and unsatisfactory; and if the numerous motions to which this system of pleading and of issues gives rise, be taken into account, I think it will be found that the Irish Procedure Act of 1853 has not diminished the expense of law proceedings, which was one of the objects proposed to be accomplished in its preamble.

On the other hand, the course of procedure introduced into the English Courts by the Procedure Acts of 1852 and 1854, appears more simple, efficient, and inexpensive.

There, the writ of summons commences the suit; in cases of debt and liquidated demands specially endorsed with the short particulars of the claim,—the final judgment thereon, (without declaration, if no appearance) the delivery, upon appearance, of the declaration, setting forth succinctly in one count each cause of action, the delivery of subsequent pleadings, until issue be joined between the parties—all seem to me a very superior course of proceeding to that prescribed by the Irish Procedure Act.

The English Rule of Trinity Term, 1853 (No. 1), prohibiting several counts in a declaration on the same cause of action, except allowed by the Court or a Judge, is a most salutary one, and has prevented in England the practice which has grown up in Ireland, of varying the statement of the cause of action in the plaint in every conceivable way which the ingenuity of the pleader could devise, contrary, if not to the letter, certainly to the spirit of the Irish Act of 1853.

I have no hesitation, therefore, in recommending the adoption for Ireland of the mode of commencing a personal action; the system and rules of pleading; and all the proceedings connected therewith as now practised in England.

The facility of the service of the writ of summons, or a notice of it, upon persons out of the jurisdiction of the Court, guarded as in England, and also the raising of questions of fact without pleadings; the raising of questions of law in interpleader suits by special case; and, indeed, the whole law in England with regard to interpleader; as well as the writ of trial, for the trial, by order of a Judge, before an inferior jurisdiction, of trivial actions for sums under £20, where no serious question of law arises; might with great advantage be extended to Ireland.

I would also recommend that the system of delivering pleadings by one party to the other, and bringing them into the office only when judgment is to be marked, and not as in Ireland, filing them in the first instance, be adopted in this country.

The simplicity of the English procedure in Ejectment, by writ of ejectment without pleading, contrasts favourably with that in Ireland, and answers equally well every purpose which the more elaborate and expensive mode in Ireland is intended to effect. I see no reason why the procedure as in England should not be applied to Ireland, giving, however, to the defendant a right to rely upon equitable defences, if notice of such an intention be given to his opponent; and retaining the provision of the Common Law Procedure Act, Ireland, 1856, with respect to the waiving of temporary bars; and also the provisions of the Landlord and Tenant (Ireland) Act, as to the mode of executing writs of *habere facias possession* without disturbing the possession of the under-tenants (s. 94); the recovery of mesne profits in ejectment on the title (s. 77); the recovery of rent in arrear, in ejectment for non-payment of rent (ss. 205–207); and the not requiring a landlord to have a right of re-entry, in order to sustain his ejectment for non-payment of rent (s. 3).

I shall now advert to the portions of the Irish practice and procedure which appear to me more convenient than the corresponding practice in England.

The argument of a bill of exceptions in the Court below, before the case is brought into a Court of Error, as in Ireland, seems a better practice than that in England, of giving judgment in the Court below, as if the bill of exceptions did not exist; for in this latter case, error is brought practically from the ruling of the Judge at Nisi Prius and not from the judgment of the Court.

The power of the Sheriff, under the 139th section of the Common Law Procedure Act (Ireland), 1853, to discharge a prisoner in custody under a *capias ad satisfaciendum*, upon payment to the Sheriff of the amount marked at foot of the execution, is a salutary practice; and the provision of the Irish statute, 35 George III., c. 30, s. 31, as to the effect of defendant's discharge from custody, under a *ca. sa.*, is consonant with reason and justice, and ought to be continued as the practice in Ireland.

In England a fund is raised by the receipt of fees in the offices, payable for the various matters of business transacted therein, and out of the proceeds of those fees the salaries of the office staff are paid; and according as the amount exceeds or falls short of accomplishing this purpose, the Consolidated Fund receives the balance or makes good the deficiency. In Ireland the duties are collected through the medium of stamps (called the Law Fund), impressed on the document liable to duty, or on dockets, or requisitions handed to the officer (7 and 8 Vic., c. 107); and all salaries are paid out of the Consolidated Fund or charged on the civil contingencies. I think the receipt of fees by the officers of the Law Courts is objectionable, if any other method of levying the proper duties can be resorted to, and the Irish practice, in this respect, which works well, should be retained.

The superiority of the mode of transacting the Chamber business in Ireland over that in England appears to me very apparent. In England there is a constant attendance of a Judge at Chambers during as well as after the term, and numerous summonses are issued for hearing before him in formal matters, a great portion of which might with convenience be transacted in the office, as in Ireland. Again, the Judge sits in his private chamber, with only the parties present in the particular case then at hearing.

COMMON LAW.

Answers as to Practice and Procedure.

Henry Yeo, Jun., Esq., Clerk of the Rules, Court of Exchequer, Ireland.

and is attended by his clerks; and the orders made, not passing through the Master's office, are signed by the Judge himself. In Ireland there is, during term time, little or no business done in Chamber before a single Judge; all the motions are heard by the Court—those without notice, generally in the morning, before the sitting of the full Court; those upon notice, before the full Court; and after Term there is a Court, called the Consolidated Chamber, which sits during each vacation, and in which one of the Judges of the three Courts presides, taking the duty in rotation according to seniority, and disposes of all the motion business of the three Courts. The Judge is attended by the respective Clerks of the Rules of the three Courts, who take down and enter in the General Rule Book of each Court the orders there made.

The sittings are held in open Court, attended by both professions, and the business is conducted in every particular, and obtains the same publicity, as the sittings in Banco. A great proportion of the motion business of the three Courts is here despatched; and that it is satisfactorily disposed of is evident from the fact that although matters of difficulty and importance come before the single Judge, and an appeal to the full Court lies from his decision, such an appeal is of rare occurrence. The entry of all orders made in Chamber, as well as in Court, in the General Order Book of each Court, affords a great facility of reference to the public.

I think, therefore, the Irish practice in this respect ought to be retained.

There are other differences in the practice and procedure of the two countries, but as they occur in minor matters, and the same end is attained, though by different ways; I do not think it necessary to advert to them.*

(Signed), H. YEO, Jun.,
Clerk of the Rules of the Exchequer.

Christopher N. Duff, Esq., Clerk of the Rules, Court of Queen's Bench, Ireland.

3. ANSWERS to preceding CIRCULAR, so far as relates to COMMON LAW PRACTICE and PROCEDURE. CHRISTOPHER N. DUFF, Esq., Clerk of the Rules, Court of Queen's Bench, Ireland.

Court of Queen's Bench,
Dublin, Feb. 19, 1863.

SIR,—I regret that illness of a serious character, has prevented me from sooner answering your communication of the 10th December last; but as I have had since my partial recovery the advantage of seeing the reports sent in to the Commissioners of Inquiry by the Clerks of the Rules of the Courts of Common Pleas, and Exchequer, and previous to my illness having had an opportunity of considering many of the points of practice and procedure so ably set forth in the report of Messrs. Jellett and Holland, I concur fully in all essential particulars in the observations of the Clerk of the Rules of the Exchequer, and in his recommendations, both as regards the practice and procedure, as well as with respect to the offices of the Courts of Law in England and Ireland. I am prohibited by my physicians from attending to any matter of business for some time, and consequently cannot send in a detailed report, which would be a mere repetition of the statement and recommendations of the Clerk of the Rules of the Exchequer.*

I would, also, respectfully suggest, that a great many of the orders which are in England required to be made by a Judge at Chambers, might with great convenience be entered in the Rules Office, upon the proper documents being filed and examined by the officer. This duty is now performed carefully and well by the officer in Ireland, in respect of a great number of matters depending on facts, of which the officer must be satisfied by affidavit or otherwise before he gives the rule. I also think that some of the rules that are now obtainable in Ireland only upon counsel's motion, such as consents to amend pleadings, for a clause of view, and other consents, &c., &c., might with great advantage and saving of expense be intrusted to the officer.

On the whole, I am strongly of opinion, that with regard to the conduct of the business of the Courts and Chambers in Ireland, the greatest possible facility and attention to the convenience of the public are afforded by the Judges in Ireland, who for all purposes, whether in Court, at Nisi Prius, or even at their own houses, are always accessible for the despatch of the business of the several Courts. Again stating my full concurrence in the opinions and recommendations of the Clerk of the Rules of the Exchequer, with respect to the establishment and offices in Ireland.

I am, Sir, your obedient servant,

(Signed), CHRISTOPHER N. DUFF,
Clerk of the Rules of Court of Queen's Bench.

To W. Neilson Hancock, Esq.,
Secretary, &c., &c.

* The portion of the answers as to the Establishments will be comprised in the papers relating to that branch of the inquiry of the Commissioners.

Suggestions of Barristers, of Societies of Attorneys and Solicitors, and of Clerks of Rules of Superior Courts of Common Law, Analysed and Arranged, in pursuance of the following Resolutions of the Irish Commissioners, 1st November and 20th December, 1862, and 17th January, 1863.

That the Secretary do arrange and analyse the papers furnished by the several members of the Bar who have returned answers to the questions submitted to them, and show, by schedule and in columns, the respective propositions contained in the several papers, with the names of the gentlemen who have made them, or concur in them, and referring to the respective paragraphs of the papers in which the suggestions are contained.

That the answers of the Incorporated Society of Attorneys and Solicitors be included in the Analysis of Suggestions.

That the answers of the Clerks of the Rules of the Superior Courts of Common Law, and of the Council of the Northern Circuit Club, be included in the Analysis of Suggestions.

Subject.	Suggestion.	Name and Paragraph of Answer.
Assimilation.		
Pleading, . . .	That uniformity as to Pleading ought to prevail in England and Ireland.	Master Fitzgibbon, 52. T. K. Lowry, Q.C. 2. R. Lane, Q.C. 9. H. Law, Q.C. 39. J. H. Otway, Q.C. 2. C. Shaw, 4. J. T. Ball, Q.C. 1. E. T. F. Beytagh, 2. H.E.Chatterton, Q.C. 3. W. M. Johnson, 8. S. Ferguson, Q.C. 4. W. O'Brien, 12. C. R. Barry, Q.C. 7.
	Ditto, save as to summons and plaint.	Sergeant Sullivan, 1, 3.
	Ditto, save as to general issue.	H. Concanon, 8.
	Ditto, as far as practicable.	M. Harrison, 9.
Practice, . . .	That uniformity as to Practice ought to prevail in England and Ireland.	Master Fitzgibbon, 52. C. Shaw, 8. R. Lane, Q.C. 9. P. J. M'Kenna, 2. J. H. Otway, Q.C. 3. W. M. Johnson, 8. J. T. Ball, Q.C. 1. W. O'Brien, 12. T. K. Lowry, Q.C. 2.
	Ditto, except ejectment.	H. E. Chatterton, Q.C. 5.
	Ditto, as far as practicable.	M. Harrison, 9.
sion of English Com- Law Procedure Act, 0, to Ireland.	The English Common Law Procedure Act, 1860, ought to be extended to Ireland.	E. T. F. Beytagh, 16.
	Ditto, as to the main provisions.	Sergeant Sullivan, 3.
	Ditto, as to interpleader and joinder of several plaintiffs.	Sergeant Armstrong, 9.
	Ditto, as to interpleader, sections 13–17. Payment into court in replevin, s. 23. And misjoinder of plaintiffs, s. 19, 21.	C. H. Hemphill, Q.C. 14.
	Ditto, as to relief against forfeiture for non-insurance against fire, s. 2. Interpleader, s. 12, &c. Joinder of plaintiffs, s. 19, &c. Payment into court, s. 23–25. Substitution of ordinary forms of action for writ of dower, right of dower, and *quare impedit*, s. 26, 27. Attachment of debts, s. 28–31. And mandamus and injunction, s. 32, 33.	H. Law, Q.C. 37.
	Ditto, as to interpleader, s. 13–15. Joinder of plaintiffs, s. 19. And attachment of debts, s. 28–31.	C. Shaw, 21–23.
	Ditto, as to provisions as to dower, *quare impedit*, misjoinder of plaintiffs, and interpleader.	G. A. C. May, 24–26.
	Ditto, sections 2, 12–18, 19–21, 28–31, 32, 33.	F. W. M'Blain, LL.D. 18–21.
	Ditto, as to interpleader and attachment of debts.	M. Harrison, 15, 16.
	Ditto, as to insurance, attachment of debts, and interpleader.	P. J. M'Kenna, 3.
	Ditto, as to sections 15, 16, and 17 of the interpleader clauses, and sections as to practice and procedure to the 34th inclusive, repealing so much of Irish Acts as to costs as is inconsistent with last-mentioned section.	William O'Brien, 11.
	Ditto, as to interpleader.	Clerk of Rules, Exchequer, 8.
	Ditto, as to real actions, attachment of debts, and interpleader.	Clerk of Rules, Common Pleas, 2, 36, 39.

Subject.	Suggestion.	Name and Paragraph of Answer.
Extension of English Common Law Procedure Act, 1860, to Ireland—*con.*	Ditto, as to section 13, as to sale of goods in interpleader.	Incorporated Society of Attorneys and Solicitors in Ireland, 10.
	Contra as to section 14—the Irish practice, that where facts are disputed, and court cannot decide without consent of parties, is to be preferred.	*Ibid*, 11.
Uniformity of practice in the Superior Courts of Common Law.	That there should be uniformity of practice in the Three Superior Courts of Common Law in Ireland.	Sergeant Armstrong, 6. M. Harrison, 3. S. Ferguson, Q.C. 3. M. Morris, 12. H. Law, Q.C. 40. W. M. Johnson, 4. F. W. M'Blain, LL.D. 4. W. O'Brien, 9.
	Ditto, and in England also.	C. Shaw, 7, 9.
	In all cases where there is a difference in practice between the three courts, a meeting of the Common Law Judges should be held, and the practice to be adopted should be determined by the majority.	C. Shaw, 9.
Forms of Action, . . (*Vide* J. & H. St., p. 1).	That forms of action are, to all intents and purposes, abolished in England, and might be completely abolished, and ought not to be restored in Ireland.	Right Hon. J. Whiteside, Q.C., M.P. 27. F. W. M'Blain, LL.D. 1. Clerk of Rules, Common Pleas, 1.
	Contra—That forms of action should be restored.	Master Fitzgibbon, 16, 26.
	Contra—No useful purpose was gained by formally abolishing the special forms of action formerly used, as was done by the 5th section of the Irish Law Procedure Act, 1852, although by the 126th section of the same Act the plaintiff is deprived of his costs in certain actions specially named in that section, where he recovers less than 40*s.* damages, unless the Judge certifies.	E. T. F. Beytagh, 1.
REAL ACTIONS. (*Vide* J. & H. St., p. 1). 1. Dower. 2. *Quare impedit.*	The provisions of the English Act, 1860, sections 26, 27, with respect to actions for dower, and actions of *quare impedit*, should be extended to Ireland, and the procedure in these actions assimilated to that in ejectment on the title.	[See recommendations as to Common Law Procedure Act of 1860, collected under that head.
PERSONAL ACTIONS. (*Vide* J. & H. St., p. 2). 1. Rotation of Writs.	The issue of writs from the different Courts in Ireland in rotation is an improvement on the English practice.	J. Murphy, 6. Clerk of Rules, Common Pleas, 3.
2. Writ and Declaration, or Summons and Plaint,	All actions should be commenced by writ and declaration.	Master Fitzgibbon, 4. H. Concanon, 3. Sergeant Armstrong, 8. E. T. F. Beytagh, 11. H. E. Chatterton, Q.C. 5. M. Morris, 3. Clerk of Rules, Exchequer, 2.
	Contra—The plan of summons and plaint and defence, as directed by the Irish Procedure Act, is preferable to the plan of writ, appearance, and declaration, as followed in England.	Sergeant Sullivan, 3. F. W. M'Blain, LL.D. Right Hon. J. Whiteside, Q.C., M.P. 40–43. C. Shaw, 2. J. Murphy, 6. G. H. C. May, 16. William O'Brien, 13.
3. Filing Pleadings, .	That the English system of delivering pleadings by one party to the other, and bringing them into the office only when judgment is to be marked, should be adopted in Ireland in preference to the Irish system of filing them in the first instance.	Clerk of Rules, Exchequer, 9. Sergeant Armstrong, 8.
4. Teste of Writ, . . (*Vide* J. & H. St., p. 2).	The practice of both countries is defective in retaining a fiction, as to the teste of the writ in the names of the Judges, as the sealing and dating from the Queen's Courts would be sufficient in this and all other writs.	Clerk of Rules, Common Pleas, 5.
ENDORSEMENT of PLEADINGS. (*Vide* J. & H. St., p. 2). 1. Specially, as in England.	There should be powers of endorsing the writ specially, as in England.	H. E. Chatterton, Q.C. 5.
2. Compulsory, if Debt or Liquidated Demand.	Where the claim is a debt, or liquidated money demand, it should be compulsory on the plaintiff to endorse it specially, and not left optional, as by 25th section of English Common Law Procedure Act, 1852.	E. T. F. Beytagh, 11.
3. Name and abode of Attorney.	The English Rule (H. T., 1853), which requires every writ to be endorsed with the name and abode of the attorney suing out the same, or with a memorandum that the writ has been sued out by the plaintiff or defendant in person, should be extended to Ireland.	F. W. M'Blain, LL.D. 26.

Subject.	Suggestion.	Name and Paragraph of Answer.
s payable, . .	The Irish practice of endorsing on the plaint the amount of costs payable if the action be settled without filing a defence ought to be extended to England.	E. T. F. Beytagh, 23.
SWAL OF WRITS. J. & H. St., p. 3).	In Ireland, the effect of a renewed writ to save the Statute of Limitations depends upon the renewal having been had by leave of the Court or a Judge. There should, I think, be a similar restriction in England.	F. W. M'Blain, LL.D. 7.
	Contra—The provision for renewal of writs to save the Statute of Limitations, English Act, 1852, section 11, should be adopted instead of 28th section of Irish Act.	H. Law, Q.C. 36.
nd Lunatics, . J. & H. St., p. 3).	The Irish practice as to infants and lunatics is to be preferred on the ground of facility of procedure, no application to a Judge being required, and more time being allowed for the appointment of guardians, &c.	Clerk of Rules, Common Pleas, 7.
VICE OF WRITS. porations, . . J. & H. St., p. 3).	That the English system of requiring no notice in the newspapers of the issuing of a writ against a corporation is to be preferred.	H. Law, Q.C. 34. M. Harrison, 17.
onal Service, .	That the Irish practice by which process-server swears to acquaintance with person of defendant is to be preferred.	Clerk of Rules, Common Pleas, 8.
onal Service to be pensed with. J. & H. St., p. 3).	That personal service of writs of summons and plaint be dispensed with, and that it be sufficient to serve the defendant by his wife, child, or servant, over the age of sixteen years, in his (defendant's) residence, which is similar to the practice in the Court of Chancery, and that proper persons be appointed by the courts for the purpose of such services.	Incorporated Society of Attorneys and Solicitors, Ireland, 15.
sonal Service, . J. & H. St., p. 4).	The Irish practice as to non-personal service is to be preferred on the ground of facility of procedure, no application to a Judge being necessary.	Clerk of Rules, Common Pleas, 9.
of Defendant out of isdiction. J. & H. St., p. 4).	The Irish practice as to service of defendant out of the jurisdiction is to be preferred.	Clerk of Rules, Common Pleas, 10.
	That in addition to the right to have an order for substitution of service on the Irish agent of a defendant resident out of the jurisdiction, a plaintiff should be permitted to serve such defendant; or, if unable to effect service, to have the attempt deemed good service where the writ appears to have come to the latter's knowledge (see English Act, 1852, secs. 18, 19).	H. Law, Q.C. 18. M. Morris, 4.
	The provisions of sections 18 and 19 of English Common Law Procedure Act, 1852, should be extended to Ireland.	H. Law, Q.C. 35. C. Shaw, 20.
	That the exceptions in 18th section, of places within the United Kingdom, should be omitted.	H. Law, Q.C. 35. C. Shaw, 20.
	The English practice superior to the Irish.	C. H. Hemphill, Q.C. 11. J. Murphy, 7.
	That on a proper case made, the court should be able to allow a party resident in one country to serve process on a party residing in the other, although the cause of action arose in the country of the defendant.	Master Fitzgibbon, 51.
for Costs, . . J. & H. St., p. 5).	The provision in the Irish Act (section 52) requiring a defendant applying for security for costs to make an affidavit of merits, seems an improvement on the English practice.	C. Shaw, 13. F. W. M'Blain, LL.D. 12. E. T. F. Beytagh, 22. M. Harrison, 5. G. A. C. May, 21.
	The Irish practice as to security for costs is preferable in all its features, but the plaintiff should be required to give security within a certain time, or action stand dismissed with costs (instead of being stayed as at present), and affidavit of merits should be served with preliminary notice.	Clerk of Rules, Common Pleas, 12.
of different causes Action. J. & H. St., p. 5).	That power of joining replevin with other personal actions, given by the Irish Common Law Procedure Acts, should be extended to England.	H. Law, Q.C. 26.
Counts on the same se of Action. J. & H. St., p. 5).	That the English system of not allowing more than one count on the same cause of action, without the leave of a Judge, is to be preferred.	Master Fitzgibbon, 19. M. Morris, 6. Sergeant Sullivan, 1. J. Murphy, 4. Sergeant Armstrong, 1. W. M. Johnson, 2. C. Barry, Q.C. 6. W. O'Brien, 4. C. H. Hemphill, Q.C. 3. Incorporated Society of Attorneys and Solicitors, Ireland, 3. H. Law, Q.C. 7. G. A. C. May, 4. Clerk of Rules, Ex. 6. M. Harrison, 1.

Subject.	Suggestion.	Name and Paragraph of Answer.
	Contra—The practice in Ireland of leaving it to the discretion of the pleader to insert one or more counts or statements of the cause of action in the plaint, is, I think, more advantageous than the English practice, which, ordinarily, restricts the pleader, under like circumstances, to the use of one count.	F. W. M'Blain, LL.D. 24.
Joinder of Actions by Husband and Wife. (*Vide* J. & H. St., p. 6).	The provisions in the Irish Act respecting the joinder of causes of action accruing to husband and husband and wife (p. 6. Joint Report), seem an improvement on the English practice.	H. Law, Q.C. 27. G. A. C. May, 22.
VENUE. (*Vide* J. & H. St., p. 6). 1. Local venue in personal actions.	That the English practice as to venue should be adopted, and the old law as to local actions should be restored.	Master Fitzgibbon, 7. C. R. Barry, Q.C. 10. G. Battersby, Q.C. 6. C. H. Hemphill, Q.C. Sir C. M. O'Loghlen, bart., Q.C. 7. H. Concanon, 11. M. Morris, 5. J. T. Ball, LL.D. Q.C. 2. J. Murphy, 3. H. E. Chatterton, Q.C. 5. W. O'Brien, 6.
	Contra—That the provisions of the Irish Act abolishing the distinction between local and transitory venues in personal actions, seem an improvement on the English practice.	Sergeant Sullivan, 3. Right Hon. J. Whiteside, Q.C. 44. G. A. C. May, 23.
	Contra—Irish practice better for Ireland.	Clerk of Rules, Common Pleas, 14.
2. Notice to Sheriff,	The plaintiff's attorney should be required to serve on the Returning Officer of the Sheriff of the county where the venue lies, a copy of the notice of trial at the same time as he serves it on the defendant's attorney; and in case he serves a notice withdrawing the notice of trial, he should, in like manner, serve a copy on the Returning Officer.	H. Concanon, 17.
3. Local venue in actions,	That venues in actions as to the realty ought to be local.	W. M. Johnson, 4.
4. Time of inserting venue,	That the venue should not be inserted in the writ of summons and plaint when issued, nor until the writ is being filed, when the venue should be inserted by the Clerk of the Pleadings in the margin of the writ, as directed by the plaintiff's attorney.	Incorporated Society of Attorneys and Solicitor (Ireland), 2.
Misjoinder of Plaintiffs, (*Vide* J. & H. St., p. 6).	That the joinder of several as plaintiffs, and recovery by one or more of them be permitted, as now in England by the Act of 1860 (sections 19-21).	[See recommendations as to Common Law Procedure Act, 1860, collected under that head.]
Signature of Counsel, (*Vide* J. & H. St., p. 6).	Irish practice preferable, as it secures uniformity of pleading and regard for precedents, and is in every way advantageous to parties litigant. No attorney should take the responsibility of advising and drafting pleadings; and were the Irish practice removed, carelessness and consequent embarrassment would ensue.	Clerk of Rules, Common Pleas, 15. F. W. M'Blain, LL.D. 5, 28.
	All declarations should be signed by counsel, whose fee, varying from ten and six-pence to one guinea, should be taxable against the unsuccessful party.	H. Concanon, 4.
	It appears to me of very great importance that the practice in Ireland of having defences and all subsequent pleadings signed by counsel, should not be altered.	Sergeant Sullivan, 1.
Time for replying, (*Vide* J. & H. St., pp. 6, 7).	That English practice of time for replying, and as to pleadings after defence, should be extended to Ireland.	Sergeant Armstrong, 9.
	Contra—That the Irish system of confining pleadings to the plaint and defence, is in conformity with the practice of the County Courts, and practice of Courts of Equity, and should be retained.	Right Hon. J. Whiteside, Q.C., M.P. 28.
Filing Pleadings, (*Ibid*).	No pleadings should be filed during long vacation, except under Bills of Exchange Act.	Clerk of Rules, Common Pleas, 16.
General Issue, (*Vide* J. & H. St., p. 7).	That the statutable abolition of the general issue in Ireland should be repealed.	Master Fitzgibbon, 26. H. Law, Q.C. 2. Sergeant Sullivan, 1. E. T. F. Beytagh, a Sergeant Armstrong, 2. G. A. C. May, 5. G. Battersby, Q.C. 3. F. W. M'Blain, LL.D R. J. Lane, Q.C. 2. M. Harrison, 10. Sir C. M. O'Loghlen, bart., Q.C. 2. M. Morris, 7. J. Murphy, 4. H. E. Chatterton, Q.C. 1 W. M. Johnson, 2. C. H. Hemphill, Q.C. 5 W. O'Brien, 3.

Subject.	Suggestion.	Name and Paragraph of Answer.
	Contra—Any attempt to reduce the expense of an action at law must be directed to the evidence. The general issue puts the plaintiff on proof of every thing, while it discloses nothing of the substantive defence intended, and necessitates the plaintiff to be prepared at all points.	Right Hon. J. Whiteside, Q.C., M.P. 23.
	Contra—That Irish and English pleadings should be assimilated in all save general issue.	H. Concanon, 8.
sion of facts by non-nial. e J. & H. St., p. 7).	That provisions of 68th section of Irish Common Law Procedure Act, 1853, by which all facts stated in any summons and plaint, and not denied in the defence, shall be deemed to be admitted for the purpose of the suit, should be repealed, leaving the general law as to pleading over to apply.	Sergeant Armstrong, 4. Master Fitzgibbon, 20.
	The qualification which exists in England whereby facts not traversed are only conditionally admitted, that is, in case the plaintiff can prove the allegations traversed, and provided the allegations not traversed are material, should be adopted in Ireland.	C. H. Hemphill, Q.C. 6.
nt of Money into ourt. e J. & H. St., p. 8).	That payment of money into court should be allowed in every action.	G. Battersby, Q.C. 7. Sir C. M. O'Loghlen, bart., Q.C. 6. M. Morris, 8.
	Ditto, in all personal actions.	C. Shaw, 24.
	That payment of money into court should be allowed in libel and slander.	G. A. C. May. 11.
	That payment of money into court should be allowed in every action except seduction and breach of promise of marriage.	W. O'Brien, 7.
	That smaller sums than penalties of bonds should be payable into Court.	M. Harrison, 13.
	That payment into court and pleading accordingly, should be permitted in replevin, and actions on bonds conditioned for payment of lesser sums than the penalties, as provided for in England by the Act of 1860, sections 23–5; if not indeed in *all* personal actions.	H. Law, Q.C. 10. Clerk of Rules, Common Pleas, 18.
	That defendant should, by express leave of the court on motion on notice, be allowed to lodge money in court in actions for oral slander, assault and battery, and false imprisonment at all events to the extent of £5; and that in all cases where money may be lodged in court, the defendant should, by like leave, and so obtained, be allowed to plead any defence, as well as to lodge money to some amount at all events.	C. R. Barry, Q.C. 11.
	The Irish law, allowing payment into Court in *scire facias* and revivor, should be extended to England.	Clerk of Rules, Common Pleas, 18.
lings of Plaintiff after yment into Court. e J. & H. St. pp. 8,	The English practice is preferable of allowing plaintiff to sign judgment for his costs incurred previous to lodgment, if not paid.	Clerk of Rules, Common Pleas, 19.
paid into Court im-unded for costs. e J. & H. St., p. 9).	That so much of the 76th section of the Irish Common Law Procedure Act as provides that money paid into Court, if not drawn before verdict, or judgment, or peremptory order, shall be impounded to answer defendant's costs, shall be extended to England.	C. Shaw, 15. Clerk of Rules, Common Pleas, 19.
ccruing after action ught. e J. & H. St., p. 9).	The provision of 40th section of Irish Common Law Procedure Act, 1853, enabling debts accruing after the commencement of the action to be pleaded in bar of the further maintenance of the action, seems an improvement on the English practice.	F. W. M'Blain, LL.D. 8. G. A. C. May, 17.
ning pleas distribu-ely. e J. & H. St., p. 9).	Pleas of payment and set off, and other pleadings capable of being construed distributively, should be taken distributively as in England, under Common Law Procedure Act, 1852, s. 75.	H. Law, Q.C. 11. M. Morris, 9. F. W. M'Blain, LL.D. 2.
g and demurring gether to extend to pleas. e J. & H. St., p. 9).	The right to plead and demur by leave of the Court or a Judge, should extend to all pleadings, as in England.	Sergeant Armstrong, 2. C. Shaw, 5. H. Law, Q.C. 13. M. Harrison, 12. E. T. F. Beytagh, 13.
ate of counsel in-of affidavit.	To ground an application for leave to plead and demur, a certificate of counsel that the objections proposed to be raised by the demurrer are valid in law should be sufficient, and no affidavit from the defendant or his attorney to that effect should be required.	F. W. M'Blain, LL.D. 5.

Subject.	Suggestion.	Name and Paragraph of Answer.
Time of hearing pleas and demurrers.	In every case of a plea and demurrer, the demurrer ought to be decided before the issue in fact is tried.	M. Morris, 11. W. M. Johnson, 4.
Several pleas on certificate of counsel, without affidavit.	That several pleas ought to be admitted on certificate of counsel without affidavit.	G. Battersby, Q.C. 1. M. Morris, 10. Sir C. M. O'Loghlen, bart., Q.C. 4. W. M. Johnson, 4. W. O'Brien, 3.
	Contra—That defendant should be limited to one paragraph, unless a Judge should think several defences admissible.	Incorporated Society of Attorneys and Solicitors in Ireland, 3.
Declaring and pleading on certificate of counsel.	That the parties should be allowed as formerly to declare and plead on the certificate of counsel, with liberty for the Court to strike out on motion all prolix, impertinent, and illusory pleadings.	G. Battersby, Q.C. 4.
Joinder of issue, (*Vide* J. & H. St., p. 9).	That the system of issues introduced by the Irish Common Law Procedure Act, 1853, should be abolished, and the English practice should be adopted in Ireland.	Sergeant Sullivan, 1. D. C. Heron, LL.D. Q.C. Sergeant Armstrong, 3. H. Concanon, 7. G. Battersby, Q.C. 8. E. T. F. Beytagh, 1 R. J. Lane, Q.C. 3, 4. G. A. C. May, 2. J. H. Otway, Q.C. 2. F. W. M'Blain, LL.D. Sir C. M. O'Loghlen, bart., Q.C. 2. M. Harrison, 11. J. Murphy, 4. J. T. Ball, LL.D. Q.C. 2. W. O'Brien, 2. H. E. Chatterton, Q.C. 3. W. M. Johnson, 2. H. Law, Q.C. 3. Clerk of Rules, Ex. 3.
	Contra—If the system of settling issues as devised by the Irish Common Law Procedure Act, 1853, has in some cases been found defective (although the defect has been enormously exaggerated), the Act provided the amplest powers for the Judges by general orders to supply any defects or correct any error in the practical working of this part of the statute. No attempt has been made, though it should have been made if required.	Right Hon. J. Whiteside, Q.C., M.P. 25.
	Contra—The present system of issues in Ireland, is a decided improvement on the old system of pleading. There are some defects in details to which a remedy can easily be applied.	C. H. Hemphill, Q.C. 1.
Demurrers, (*Vide* J. & H. St., pp. 9, 10).	The Irish practice as to demurrers is to be preferred, no joinder in demurrer being necessary.	Clerk of Rules, Common Pleas, 20.
Special cases as to questions of fact without pleading. (*Vide* J. & H. St., p. 10).	That the English system of issues on questions of fact without pleading be extended to Ireland.	Sergeant Armstrong, 9. H. Law, Q.C. 22. Clerk of Rules, Exchequer, 8.
	That the English system of power to send such issues to the inferior Courts should be extended to Ireland.	Sergeant Armstrong, 9.
PLEADING IN GENERAL.		
1. Defendant and plaintiff to have liberty to traverse allegations in pleadings.	Instead of the defendant being restricted to traverse as of course more than one allegation in the plaint, he should be at liberty to traverse, without leave, all the material allegations of the plaint.	C. H. Hemphill, Q.C. 6. F. W. M'Blain, LL.D.
	The plaintiff should also, as in England, be at liberty as of course, to traverse the whole of any plea, or subsequent pleading, by a general denial; and the defendant, in like manner, should be allowed to deny the whole or part of a replication, or subsequent pleading.	C. H. Hemphill, Q.C. 6.
2. Service of copies of pleadings.	I think the provision in the Irish Process and Practice Act, 13 Vict., c. 118, sec. 44, requiring service of copies of all pleadings when filed, and of affidavits intended to be used upon motions, and dispensing with attested copies, a very useful one, as saving expense and preventing delay and that it ought to be extended to England, if not already the practice there.	E. T. F. Beytagh, 24. H. Concanon, 19.
3. General reply to pleas of confession and avoidance.	To all pleas in confession and avoidance the plaintiff should be entitled to reply, traversing the plea generally.	G. A. C. May, 7.
4. Notice of objections to a pleading.	The rule of the Ecclesiastical Courts should be adopted, which requires a party objecting to a pleading to serve notice on his adversary, specially pointing out the objection and requiring him to amend, on payment of the costs of the notice and amendment. This would prevent a practice which now prevails, of moving on notice, without any object but the creation of costs, to strike out or amend pleadings as "embarrassing." No two Judges agree in the meaning of this last word, consequently, the party moving has a good *chance* of costs on the motion; or, if he fail in getting them, they are generally made costs in the cause, and then he has another *chance*.	G. Battersby, Q.C. 5.

Subject.	Suggestion.	Name and Paragraph of Answer.
Limit to demurrers,	No special demurrer should be allowed without written notice to the adversary of the defect, and calling on him to amend, &c.	Master Fitzgibbon, 41.
Forms of pleadings,	That a general rule, requiring conformity to approved precedents in pleading should be adopted and enforced.	Sergeant Armstrong, 5.
rticulars of demand, (*Vide* J. & H. St., p. 10).	Irish practice as to particulars of demand preferable in all its features; a reasonable time should be given by statute or order to defendant to plead after service of such particulars.	Clerk of Rules, Common Pleas, 21
me of obtaining judgment by default.	That judgment in default in not proceeding to trial can be obtained in a shorter time in England than in Ireland.	M. Harrison, 14.
dgment by default for liquidated and unliquidated demands. (*Vide* J. & H. St., p. 11).	The Irish practice on this subject is preferable on the ground of facility of procedure in every respect, save that affidavit of sum due in liquidated demands is a questionable requirement.	Clerk of Rules, Common Pleas, 22.
Power of sending case under £20 to Inferior Courts. (*Vide* J. & H. St., p. 12).	Section 17 of the 3 & 4 Wm. IV., c. 42, which empowers the Court or a Judge in England to order any action depending in the Superior Courts (where the sum sought to be recovered does not exceed £20), to be tried before the Sheriff of the county where the action is brought, or any Judge of any Court of Record for the recovery of debt in each county, might advantageously be extended to Ireland.	C. H. Hemphill, Q.C. 16. F. W. M'Blain, LL.D. 26. Clerk of Rules, Exchequer, 8.
	In similar cases the Courts in Ireland frequently recommend the matter to be disposed of by the Chairmen of Quarter Sessions, but always with consent of the parties.	Clerk of Rules, Common Pleas, 23.
sessment of damages before Master. (*Vide* J. & H. St., p. 11).	That the more extensive power given to the Master of the Court in Ireland by section 101 of the Common Law Procedure Act, 1853, and by section 99 of the Common Law Procedure Act, 1856, be extended to England.	M. Harrison, 6.
	Contra—That the judicial functions of the Masters of the Common Law Courts ought to be abolished, and damages in all unliquidated demands ought to be assessed before a Judge without a special order.	W. O'Brien, 10.
aintiff to reply within a given time.	The defendant should have power to require the plaintiff to reply, or furnish the abstract of issues, within a given time from filing the defences, as in English Act, 1852, section 53.	C. Shaw, 6.
tice of trial, . . . (*Vide* J. & H. St., p. 13).	English practice preferable, affording facilities of procedure.	Clerk of Rules, Common Pleas, 24.
sts for not proceeding to trial. (*Ibid*).	The Irish practice preferable in limiting the time for obtaining the rule, staying the proceedings until costs are paid, and enabling the defendant to recover them by execution; but the practice is defective in this respect, that if the defendant be unable to recover his costs he can neither non-suit nor put plaintiff out of Court.	Clerk of Rules, Common Pleas, 25.
fault in not proceeding to trial. (*Ibid*).	Irish practice preferable, on the ground of facility of procedure. (In replevin cases the plaintiff is entitled to this rule after one term. Common Law Procedure Act (Ireland), 1856, sec. 100.)	Clerk of Rules, Common Pleas, 26.
	If the rule to proceed to trial applied to abortive trials, or trials the verdicts in which had been set aside, and if the defendant could in all cases enter the rule to proceed to trial whether the plaintiff had taken the case to trial or not, it would do away with the necessity of trials by proviso, especially so if the non-suit judgment were held as effectual a bar as a verdict for defendant on trial by proviso.	
al by proviso, . . (*Vide* J. & H. St., pp. 13, 14).	The costs of taking a record to trial by proviso are considerable, as the defendant, in entering the record for trial, must incur the same expense as if the plaintiff were proceeding adversely, and must be prepared to proceed with his own case, or meet the plaintiff should he proceed.	Clerk of Rules, Common Pleas, 27.
	By the practice in Ireland the plaintiff's default is not considered established until the lapse of at least one term or assize.	

Subject.	Suggestion.	Name and Paragraph of Answer.
Court of Consolidated Nisi Prius in Dublin. (*Vide* J. & H. St., p. 14).	Every kind of case ought to be triable in the Consolidated Court.	W. O'Brien, 5.
Juries, ... (*Vide* J. & H. St., p. 14).	That with regard to juries for the County and City of Dublin, panels of special and record juries for each Court should be publicly balloted for in the Master's Office of the Court of Queen's Bench, upon a day to be fixed for that purpose before the first day of each term.	Incorporated Society of Attorneys and Solicitors Ireland, 5.
Common juries, . .	The subject of increasing the payments to common jurors is worthy of consideration.	H. E. Chatterton, q.c. 5.
Special juries, . . .	A special jury under the old system ought to be given as a matter of right.	Sergeant Sullivan, 2. G. Battersby, q.c. 9. H. Concanon, 16.
	Ditto, especially in Dublin, and in counties that have large special jury panels.	H. E. Chatterton, q.c. 5.
View, ... (*Vide* J. & H. St., p. 15).	That the practice as to view in England be extended to Ireland.	P. J. M'Kenna, 3. Clerk of Rules, Common Pleas, 29.
Evidence, ... (*Vide* J. & H. St., p. 15).	The 64th section of the Irish Common Law Procedure Act, 1853, which provides for the production upon every trial and argument of any deed or document relied upon by either party in his pleading, ought to be extended to England.	C. Shaw, 14. E. T. F. Beytagh, 20.
	Ditto, as interpreted in case of Armstrong *v.* Turquaud, with some modification.	C. Barry, q.c. 16.
As to comparison of handwriting.	That the provisions of the Irish Procedure Act of 1856, as enacted by the 25th, 26th, 27th, 28th, 29th, and 30th sections, should be extended to Courts exercising Criminal Jurisdiction in England.	Sergeant Sullivan, 3. C. Barry, q.c. 16.
	It is somewhat anomalous that comparison of handwriting, by witnesses should be legal evidence on a criminal trial in Ireland, whilst it would be inadmissible in England.	Sergeant Sullivan, 3.
	Contra—The Irish Common Law Procedure Act, 1856, has effected, where one would have least expected it, a rather startling change in our criminal law, by making comparison of handwriting admissible in criminal cases.	E. T. F. Beytagh, 16.
Exceptions as to witnesses,	That exceptions which now exist as to the examination of parties, should be done away with; and that in every action the plaintiff and defendant should be competent witnesses.	Sir C. M. O'Loghlen, bart., q.c. 6.
Secondary evidence of unstamped document.	The 29th section of the Act, 17 & 18 Vict., c. 125, as to paying duty at the trial on an unstamped document, and the analogous section of the Procedure Act of 1856 in Ireland, should be amended, so as to enable parties to pay the duty and penalty when the unstamped document is lost or destroyed, and secondary evidence is given of its contents.	Sergeant Sullivan, 3.
Proceedings at Trial. (*Vide* J. & H. St., p. 15). 1. Notice of trial.	That the English Rule, No. 34, Hilary Term, 1853, whereby countermand of notice of trial may be given in the country, might be adopted with advantage in Ireland.	C. H. Hemphill, q.c. 17.
2. Shorthand writer, .	Either plaintiff or defendant ought to be at liberty, at a trial at Nisi Prius, to require that the evidence, and the charge of the Judge who tries the case, should be taken down by a sworn shorthand writer, on lodging with the Judge's Registrar such a sum as, in the opinion of the Judge, will be sufficient to cover the expense; and in such case, the shorthand writer's notes should constitute the recognised report of the proceedings on trial.	Sergeant Sullivan, 2. R. J. Lane q.c. 5. H. Law, q.c. 41.
	That the Judges' Registrars, or other public officers appointed for the purpose, ought to be shorthand writers, and to take the evidence in all Criminal and Nisi Prius trials.	W. M. Johnson, 4.
Expenses of witnesses, .	That working tradespeople, artizans, and labourers, and others whose means of life is their daily labour, should be entitled to their expenses, at a Judge's discretion, to come off unsuccessful party.	Sergeant Armstrong, 11.

Subject.	Suggestion.	Name and Paragraph of Answer.
l of Exceptions, . . (*Vide* J. & H. St., p. 16).	The Irish practice of the argument of a bill of exceptions in the Court below, before the case is brought into the Court of Error, is to be preferred.	Clerk of Rules, Exchequer, 12.
	Contra—The English practice is preferable on the grounds of facility of procedure, as the exceptions are only examinable in the Court of Error.	Clerk of Rules, Common Pleas, 30.
	The Irish practice which limits the time for furnishing and settling exceptions is desirable.	Clerk of Rules, Common Pleas, 30.
erlocutory judgment, .	I think a party should be at liberty to mark an interlocutory judgment in such a manner as that the costs of a demurrer, or the trial of issues of fact, could be at once taxed and recovered against the unsuccessful litigant, without being obliged to wait for final judgment.	Sergeant Sullivan, 2.
nc of execution after judgment. (*Vide* J. & H. St., p. 17).	That the Irish practice of more speedy execution after verdict is preferable to the English practice.	Right Hon. J. Whiteside, Q.C., M.P. 46.
	Contra—That the 127th section of the Irish Procedure Act, 1853, gives too large a power to Judge at Nisi Prius of awarding immediate execution.	Master Fitzgibbon, 47.
	Contra—That English rule of execution not issuing for fourteen days after judgment is to be preferred.	Clerk of Rules, Common Pleas, 33.
rit of *ca. sa.*, . . .	That writs of *ca. sa.* be so framed that a Sheriff under *ca. sa.* should be authorized to detain the defendant until the sum marked at the foot of the writ and his fees shall have been paid.	Incorporated Society of Attorneys and Solicitors, 6.
yment to Sheriff by party arrested. (*Vide* J. & H. St., p. 18).	That provisions of 139th section of Irish Common Law Procedure Act, 1853, entitling party arrested under *ca. sa.* to his discharge on payment to the Sheriff or Gaoler, should be extended to England.	H. Law, Q.C. 28. F. W. M'Blain, LL.D. 13. C. Shaw, 16. Clerk of Rules, Ex. 13.
fect of arrest under *ca. sa.*, (*Vide* J. & H. St., p. 18).	That the continuance of the enactment, 35 Geo. III., c. 30, sec. 31 (providing that arrest or discharge by a creditor of his debtor, shall not amount to a satisfaction of the debt), notwithstanding the terms of the Irish Common Law Procedure Act, 1853, sec. 140, should be declared.	H. Law, Q.C. 23. F. W. M'Blain, LL.D. 23. Clerk of Rules, Exchequer, 13.
	Contra—The consequences of taking the body under a writ of *capias ad satisfaciendum* should be the same in Ireland as in England, and the provisions of the Irish Statutes, 33 Geo. III., c. 42, and 35 Geo. III., c. 30, which render the law on this subject in Ireland different from that in England, should be repealed.	Sergeant Sullivan, 2.
try of satisfaction of judgments. (*Vide* J. & H. St., p. 18).	That sections 143 and 144 of the Irish Common Law Procedure Act, 1853, relating to the entry of a memorandum of part payment and satisfaction on the record of judgments, might be properly extended to England.	F. W. M'Blain, LL.D. 9. M. Harrison, 7.
	English practice as to satisfaction of judgments to be preferred.	Clerk of Rules, Common Pleas, 35.
	That every entry of satisfaction of a judgment on the roll of the Court shall be signed by an attorney.	Incorporated Society of Attorneys and Solicitors, Ireland, 8.
ATTACHMENT OF DEBTS. (*Vide* J. & H. St., p. 19). Increased powers.	That additional powers given Judges in England by the English Common Law Procedure Act, 1860, sections 28–31, should be extended to Ireland.	[See recommendations as to Common Law Procedure Act, 1860, collected under that head.]
	That wider powers of attaching moneys due to debtors should be given to the Courts of Law, and that a discretion should be given to the Courts of Law to charge contingent interests, and, amongst others, distributive shares of the assets of an intestate.	P. J. M'Kenna, 7.
Examination of judgment debtor. (*Vide* J. & H. St., p. 19).	Section 60 of English Common Law Procedure Act, 1854, providing that a judgment creditor may apply for an order to examine orally the judgment debtor as to any debts owing to him, before a Master, or other person appointed by Court or Judge, should extend to Ireland.	C. H. Hemphill, Q.C. 14. M. Harrison, 16. F. W. M'Blain, LL.D. 17. P. J. K'Kenna, 3.
ndamus and injunction, (*Vide* J. & H. St., p. 19).	That sections 32 and 33 of English Common Law Procedure Act, 1860, as to mandamus, shall extend to Ireland.	[See recommendations as to Common Law Procedure Act, 1860, collected under that head.]

Subject.	Suggestion.	Name and Paragraph of Answer.
COSTS. (*Vide* J. & H. St., p 19). 1. Simple rule as to costs, where damages trivial.	It would be desirable to introduce one simple rule with respect to costs, where the damages recovered are of trivial amount:—That in actions of contract, where the amount recovered should not exceed £20, and in actions of tort, where the damages should not exceed £5, the plaintiff should not be entitled to costs unless the Judge should certify that the action was proper to be tried in the Superior Courts.	G. A. C. May, 15.
2. Costs.—Confused state of law.	The present provisions on the subject of costs are contained in the Common Law Procedure Act, 1853, sections 126 and 243, and Common Law Procedure Act, 1856, section 97; a mere reference to these sections will at once show in what a confused and embarrassing position the subject is.	M. Morris, 13.
3. Suggested enactment as to costs.	I would suggest that a new enactment, after repealing all the former ones on the subject of costs, should run thus—"That all actions of contract cognizable in the Civil Bill Court, wherein the plaintiff shall recover less than £20, and in all actions of tort similarly cognizable, less than £5, it shall be lawful for the Judge who tried the action, if he shall think fit so to do, upon the application of the defendant, to certify that the plaintiff in such action shall not recover more costs than the amount recovered in said action. Provided that in actions of slander, the plaintiff shall in no case be entitled to any costs unless he shall recover over forty shillings damages." In my opinion, the certificate should be a disqualifying one, and not, as at present, a qualifying one; from the difference in the relative wealth, modes of dealing, and constitution of inferior Courts in England and Ireland, no similar rule can be, or ought to be, established for both countries.	M. Morris, 13.
4. Costs of actions under £20.	The present costs allowed for actions under £20 are inadequate, and there should be a graduated scale of costs for £5, £10, £15, and £20 demands.	Sergeant Armstrong, 13.
5. Division of costs in cases under £20.	The mode adopted of dividing the gross costs in cases under £20 is unfair, as the outlay in each case is the same; the entire outlay should be allowed, and the division should only be of the attorneys' fees.	Incorporated Society of Attorneys and Solicitors Ireland, 7.
Revival of Judgment, (*Vide* J. & H. St., p. 20).	Irish practice preferable, on the ground of facility of procedure, the writ being the declaration; but the English practice, by allowing a plaintiff to discontinue by quashing his writ, on payment of costs, is certainly an advantage.	Clerk of Rules, Common Pleas, 37.
ERROR. 1. Bail in Error, (*Vide* J. & H. St., p. 21).	Irish practice preferable, on the ground of facility of procedure, in combining in one recognizance security to the Court of Error and House of Lords.	Clerk of Rules, Common Pleas, 38.
2. Interest on judgments. (*Ibid*).	The English practice is preferable as to cases in the Court of Error, with respect to the allowance of interest for delay of execution, whether the judgment is or is not affirmed.	Incorporated Society of Attorneys and Solicitors, Ireland, 9.
3. Error by legal representative of deceased. (*Ibid*).	That section 167 of the Irish Common Law Procedure Act, 1853, which enables the heir, or presumptive representative of any party, plaintiff or defendant, for the purpose of bringing error to enter suggestion of the death, and that he is such legal representative, might be advantageously extended to England.	F. W. M'Blain, LL.D. 10.
4. Signature of counsel,	In Ireland, by the 196th General Order, 1854, assignments of error must be signed by counsel. This practice should also be extended to England, where at present the signature of counsel to pleadings in error is not required.	F. W. M'Blain, LL.D. 25.
5. Time for making up books,	The time within which the books for the Judges in cases of error should be lodged should be clearly defined, and should be a period longer than that allowed for a similar purpose in cases of demurrer.	G. A. C. May, 14.
INTERPLEADER. (*Vide* J. & H. St., pp. 21, 22). 1. Assimilation.	That provisions of English Common Law Procedure Act, 1860, as to interpleader, should be extended to Ireland.	[See recommendation as to Common Law Procedure Act, 1860, collected under that head].
2. Summary jurisdiction as to trifling amount.	Questions involving sums of trifling amount frequently arise on interpleader motions, which might very properly be disposed of by the Court in a summary way without the expense of an action or an issue.	G. A. C. May, 27.

Subject.	Suggestion.	Name and Paragraph of Answer.
REPLEVIN.		
Vide J. & H. St., p. 22). ervice.	Irish practice in replevin defective, as there is no express enactment requiring plaintiff to serve his writ, which renders the sections compelling him to file it and proceed to trial within one term after plea, perfectly nugatory.	Clerk of Rules, Common Pleas, 40.
	There should be some means of compelling the plaintiff in replevin to file the summons and plaint.	C. H. Hemphill, Q.C. 12.
vowries and cognizances,	There are also many minor objections to the present mode of pleading, such as the abolition of avowries and cognizances in replevin, which I do not think it necessary to refer to in detail.	H. E. Chatterton, Q.C. 2.
udgment for rent, irrespective of value of goods.	The provision giving the landlord in replevin judgment for his rent, irrespective of the value of the goods distrained (Act, 1856, sec. 101), might be extended to England. In such cases the amount thus due has been judicially ascertained (Stat. 17, Car. II., cap. 7), and there seems to be no reason why this finding of the jury should not at once become a formal judgment, and thus prevent further litigation.	H. Law, Q.C. 32. G. A. C. May, 18.
EJECTMENT.		
gainst complete assimilation.	The action of ejectment may, perhaps, form an exception to the principle of complete assimilation, as the relation of landlord and tenant is so different in the two countries; but, even in this instance, a similar system of pleading might, I think, be adopted in England and Ireland.	M. Harrison, 2.
ervice of ejectment, *Vide* J. & H. St., p. 24).	The recent rule as to service of ejectments for non-payment of rent should be rescinded, and the former practice restored.	G. A. C. May, 12.
	The 23 & 24 Vict., c. 154, s. 55, under which ejectments may be brought, and the tenant's interest wholly evicted, without notice of any kind, to a mortgagee or other person interested in the preservation of the case, requires attention.	Incorporated Society of Attorneys and Solicitors, Ireland, 14.
	We beg to draw attention to a clause in the recent Landlord and Tenant Act, 23 & 24 Vict., c. 154, sec. 45, whereby it is provided that service of an ejectment for non-payment of rent upon the person or persons in the actual possession of the lands as tenant or under-tenants shall only be necessary; and this may be productive of great hardship and injustice. We think that, for the protection of incumbrancers upon leases sought to be evicted, some means might be devised, either by returning to the old system of serving parties having registered interests with the ejectment, or by giving them notice of a judgment in ejectment having been obtained; otherwise by collusion between the landlord and tenant, or by the absence of the incumbrancer from the country, he may, through ignorance of the proceedings till the time for redemption has expired, lose the amount of his charge.	Northern Law Club, Belfast, 3.
Tenant to give notice to landlord of service. *Vide* J. & H. St., p. 24).	Section 209 of English Common Law Procedure Act, 1852, as to tenant giving notice to landlord of the service of ejectment, might be advantageously extended to Ireland.	C. H. Hemphill, Q.C. 14.
No ejectment where there is sufficient distress. *Vide* J. & H. St., pp. 26, 27).	The provision in force in England with reference to ejectments for non-payment of rent, by which, to enable a landlord to eject, there must be no sufficient distress to be found on the premises countervailing all the arrears due, ought, in my opinion, be restored in Ireland. The facilities which landlords enjoy in Ireland for evicting their tenants, are repugnant alike to the Common Law and to English legislation, and have been productive of many agrarian evils in this country.	C. H. Hemphill, Q.C. 18.
	Ditto, as to ejectment when no sufficient distress on the premises.	Incorporated Society of Attorneys and Solicitors, Ireland, 12.
Irish proceedings and pleadings in ejectment for non-payment of rent to be preferred.	The proceedings and pleadings in Ireland in ejectment for non-payment of rent seem preferable to those in England. Probably, however, the latter are found practically sufficient, such an action not being of very frequent occurrence in that country, and when it occurs, not giving rise to questions of form and technicality.	G. A. C. May, 20.

Subject.	Suggestion.	Name and Paragraph of Answer.
	Contra—The introduction of pleadings in ejectment for non-payment of rent was an infelicitous alteration. The greatest difficulty arises as to the mode of taking defence by one of several defendants wishing to traverse the fact of tenancy to the plaintiff, especially since the passing of the Landlord and Tenant Law Amendment Act, 1860, the 52nd section of which authorizes an ejectment to be brought on a tenancy from year to year.	E. T. F. Beytagh, 8.
	Contra—The simplicity of the English procedure in ejectment, by writ of ejectment without pleading, contrasts favourably with that in Ireland.	Clerk of the Rules, Exchequer, 10.
6. Endorsement on writ-costs. (*Vide* J. & H. St., p. 27).	That the endorsement on the writ of summons and plaint in ejectment for non-payment of rent, by which the costs are limited to £1 10*s.*, if rent and costs be paid within ten days from service, should be discontinued, and that the regular costs, according to the Schedule of Fees (subject to taxation), should be allowed.	Incorporated Society of Attorneys and Solicitors, Ireland, 13.
7. Time of taking defence,	In ejectment, a defendant should be allowed to take defence at any time before judgment marked, as in other actions.	G. A. C. May, 13.
8. Recognizance required in case of staying execution. (*Vide* J. & H. St., p. 30).	That the English practice of not staying execution without security by recognizance, should be adopted in Ireland.	Incorporated Society of Attorneys and Solicitors, Ireland, 16.
9. Plaint in ejectment for non-payment of rent should be same as on the title, with note of amount of rent claimed.	The plaint in ejectment for non-payment of rent should be similar to that in ejectment on the title; but a note should be subjoined that it was brought for non-payment of rent as under the old system in Ireland previously to the passing of any of the Procedure Acts. Something similar to this, with an endorsement of the amount of rent demanded, would answer every purpose of apprising the defendant of the nature of the claim alleged against him.	E. T. F. Beytagh, 8.
10. The defence should be as in England, with a note, in case of payment relied on, of the particulars of such payment.	The appearance or defence should be as in England, with this addition, which might, perhaps, be advantageously adopted in both countries, namely, that if payment of the rent were relied upon, a note or memorandum to that effect should be added, and particulars of such payments endorsed.	E. T. F. Beytagh, 8.
11. Defect in Irish Law of Ejectment under Landlord and Tenant Act, 1860.	It was decided that under the Irish Common Law Procedure Act, 1853, where a defendant in ejectment for non-payment of rent sought to deny the plaintiff's title as landlord, he should plead "that the defendants, or any of them, or any other person, did not hold the premises, or any part of them, as tenants to the plaintiff;" and where, since the passing of the Landlord and Tenant Act, 1860, an ejectment for non-payment of rent was brought upon a tenancy from year to year, and the plaint alleged that the defendants named held as such tenants, at a rent stated, a plea by one defendant, traversing the holding by him, together with the other defendants as alleged, was held valid (Murphy *v.* Cary, 11 I. C. L. Reports, App. p. 9) upon motion to set it aside as embarrassing. It was afterwards demurred to, but the defendant had judgment (S. C. not yet reported, Exch. Hil. Term, 1862). But if the plaint were brought alleging a tenancy generally, and if one defendant only were named in it, but it was served upon several others, by which means they all became defendants, I apprehend it would be difficult to frame such a defence as would raise the question of the plaintiff's title as landlord of the premises which would not be open to serious objections in point of pleading.	E. T. F. Beytagh, 8.
12. Ejectment by mortgagee, (*Vide* J. & H. St., p. 30, and Holland's separate Statement, p. 55).	The powers given to Courts of Law in England in ejectments by mortgagee against mortgagor, to compel mortgagee to reconvey the mortgaged premises and deliver up the title deeds in case the mortgagor should bring into Court the mortgage money, interest, and costs, should be extended to Ireland.	P. J. M'Kenna, 3.
13. Equitable defences in ejectment.	That the provisions of the Irish Common Law Procedure Act making the defence a pleading, and allowing equitable defences, should be extended to England.	H. Law, q.c. 29.

Subject.	Suggestion.	Name and Paragraph of Answer.	
	Contra—In Ireland equitable defences, under the Irish Common Law Procedure Act, 1856, section 85 (English Common Law Procedure Act, 1854, section 83), are admissible at least in ejectments for non-payment of rent—Turner *v.* M'Auley, I. C. L. Reports, 245. The contrary is the Law in England. These defences in Ireland have hitherto been almost uniformly unsuccessful in ejectments—Deering *v.* Lawler, 7 I. C. L. Reports, 333; and, I think, ought to be declared inapplicable to that action, or at all events that the law upon the subject should be assimilated in the two countries.	E. T. F. Beytagh, 14.	
4. Temporary bars in ejectment.	That the provisions of s. 89 of Irish Common Law Procedure Act, 1856, empowering Court to make an order directing temporary bars to be waived, and the real question of title tried, should be extended to England.	Sergeant Armstrong, 10. C. Barry, Q.C. 14. H. Law, Q.C. 30. C. Shaw, 18.	F. W. M'Blain, LL.D. 14. M. Harrison, 8. Clerk of Rules, Ex. 10. Clerk of Rules, C.P. 41.
	Contra—So long as the Courts of Law and of Equity are kept distinct, the power to compel parties to waive temporary bars ought to be left to the jurisdiction of the Equity Court; and, therefore, the 89th section of the Irish Common Law Procedure Act, 1853, to which there is no corresponding enactment in England, ought to be repealed; or, if thought beneficial, it ought to be extended to the English Courts of Common Law.	E. T. F. Beytagh, 15.	
5. Joinder with ejectment of action for mesne rates. (*Vide* J. & H. St., p. 28).	That the power of joining the claims for mesne rates with the ordinary action of ejectment, given by Irish Common Law Procedure Act, 1853, s. 195, should be extended to England.	Sergeant Armstrong, 10. C. Barry, Q.C. 14. H. Law, Q.C. 31. C. Shaw, 17.	E. T. F. Beytagh, 21. G. A. C. May, 19. Clerk of Rules, Ex. 10. Clerk of Rules, C.P. 41.
6. Extended power of suing in ejectment.	The 52nd and 53rd sections of 23 and 24 Vic., c. 104, should be extended to England, so as to enable a landlord to bring an ejectment for non-payment of rent in all cases where rent is due upon a contract to such landlord.	H. Concanon, 18.	
7. Mode of executing *habere*. (*Vide* J. & H. St., p. 26).	The mode of executing the *habere* in Ireland, including defendant's right to pay Sheriff amount due for rent and costs, is to be preferred.	Clerk of Rules, Common Pleas, 41.	
roceeding to compel bail, (*Vide* J. & H. St., p. 30).	Irish practice defective in limiting the time for defendant to find bail to six days, especially if the recognizance be acknowledged before a Judge.	Clerk of Rules, Common Pleas, 42.	
	It would tend to public convenience if the Commissioners for taking Affidavits were empowered to take these recognizances, also those for costs and bail at Bar.	*Ibid.*	
iat, ...	In all cases of arrest under Judges' fiat, a copy of the affidavit or affidavits upon which such fiat was granted should be furnished to the defendant on his arrest. (Under the present practice he has no means of ascertaining the grounds of his arrest for several days.)	Clerk of Rules, Common Pleas, 43, 44.	
	And the plaintiff should be required to serve his writ at the time or immediately after the arrest (within three days), and proceed to trial on the first opportunity, or judgment of non-suit for defendant, (in ordinary cases three clear terms must elapse from filing of defence). As under present practice, if defendant unable to pay the debt or procure bail, or even if he procure bail and have a good defence on the merits, he cannot compel the plaintiff to file or even serve his writ, and is therefore deprived of the remedy applicable to other cases, and cannot obtain his discharge for six months if the plaint be not filed (37 Gen. Order, 1854).	*Ibid.*	
JUDGES.			
. Sittings for motions out of term.	A Judge ought to sit every day for motions, between the end of term and the going out of the circuits.	H. E. Chatterton, Q.C. 6. F. W. M'Blain, LL.D. 26.	M. Harrison, 3.
	The number of days upon which a Judge shall sit in Chamber to hear motions for the Three Courts of Common Law should be increased from two days in the week to, at least, three days in the week, in the intervals between Hilary Term and the Spring Assizes, and between Trinity Term and the Summer Assizes.	C. Shaw, 10. W. M. Johnson, 4.	
. Sittings for practice motions in terms.	It would be very desirable that a Judge should sit every day during term to hear and dispose of all practice motions from all the Courts, with power to order any such motion to be moved in the full Court.	H. E. Chatterton, Q.C. 6.	

Subject.	Suggestion.	Name and Paragraph of Answer.
3. Judges in Chambers, .	That the Consolidated Chamber Court in Ireland is preferable to the Chamber system in England, as being attended with more publicity and leading to fewer motions to vary Chamber Orders.	Sergeant Armstrong, 7. Clerk of Rules, Exchequer, 15.
4. Discretion given to Judges.	The very extensive discretion given to the Courts or to a Judge by the modern Procedure Acts in England and Ireland is objectionable.	Master Fitzgibbon, 43, 46.
Circuits. 1. Rotation of Judges, .	That circuits should be put on a better system than that which at present exists, and that some system of rotation among the Judges should be adopted (such as exists at the Commission in Dublin), by which each circuit, in its turn, would have the benefit of the assistance and guidance of all the Judges in rotation.	Sir C. M. O'Loghlen, bart., q.c. 8.
2. Interchange of English and Irish Judges.	That there should be an interchange of English and Irish Judges on circuits.	J. H. Otway, q.c. 4.
Appeal from decision on general motion.	When there is a difference of opinion among the members of the Court upon a general motion, the suitor should have a right of appeal to the Court of Error, similar to that enjoyed on new trial motions.	C. H. Hemphill, q.c. 13.
Courts of Exchequer and Common Pleas to have concurrent jurisdiction with Queen's Bench in mandamus and quo warranto.	I do not see why the Courts of Exchequer and Common Pleas should not have jurisdiction in quo warranto and mandamus cases, as well as the Queen's Bench; and I would suggest that jurisdiction in these cases should be conferred on them.	Sir C. M. O'Loghlen, bart., q.c. 9.
Pleading in Crown side of Queen's Bench and Petty-bag side, Chancery.	I hope the attention of Her Majesty's Commissioners shall be extended to the Crown side of the Queen's Bench and the Petty-bag side of Chancery, and that a similar system of pleading and practice shall be adopted in both these Courts, as in other Courts of Law.	Sir C. M. O'Loghlen, bart., q.c. 9.
Revival of judgments against heir and terre tenants.	The whole subject of the revival of judgments against heir and terre tenants requires revision. The matter is not alluded to in either of our Procedure Acts. The Irish Statute 26 Geo. III., c. 31, called O'Neill's Act, would require consideration in connexion with this subject, which, however, is too multifarious to be dealt with here.	E. T. F. Beytagh, 18.
Mode of remunerating Attorneys.	Above all, and before all, I would suggest that some system be observed of remunerating attorneys for their professional services different from the present, in which their duty to their client and their duty to themselves is directly in opposition. A system of fixed fees for each class of cases, in place of remuneration dependent on "attendances," and "notices," and "letters," and "scrivenery profits," with liberty to charge, in addition, costs actually out of pocket, would, in my opinion, go far to remedy the crying abuses of the present system.	Sir C. M. O'Loghlen, bart., q.c. 7.
Officials not to be protected from arrest for debt.	As to the protection from arrest for debt, it appears a monstrous abuse that an officer employed in administering the law should have protection from arrest, and set his creditors at defiance.	Incorporated Society of Attorneys and Solicitors Ireland, 18.
Law Fund Stamps, . .	That a reduction be made in the amounts charged in law fund stamps.	Ibid, 20.
Winter Assizes, . . .	As parties litigant residing in counties at a distance from Dublin, and especially those containing large towns of great commercial importance, such as Antrim, Cork, and Londonderry, are obliged to lay the venue in Dublin, thereby entailing much additional expense and inconvenience, or to allow the matter to remain unsettled, at the risk of the insolvency or removal of the debtor, during the interval between the Summer Assizes in July and the Spring Assizes in March, a period of nearly eight months, we consider that the practice of holding a Winter Assize, as in England, might be advantageously extended to Ireland, and made available for civil as well as criminal cases.	Northern Law Club, Belfast, 7.
Counsel to be limited to a particular Court.	That the practice of counsel to appear in one Court only, and confine himself to such Court, should be extended to Ireland.	Northern Law Club, Belfast, 8.

Subject.	Suggestion.	Name and Paragraph of Answer.
nents to be recognised different portions of Jnited Kingdom in nange of residence of efendant.	That a judgment recovered in any one of the three kingdoms against a defendant, for the time being resident therein, should, upon the removal of the said defendant or his goods to another of said three kingdoms, be, by some simple process, such as the production of an attested copy thereof, recognised by the Courts of such kingdom, and execution be issued thereon without the necessity, which at present exists, of instituting a new suit upon foot of such judgment.	Northern Club, Belfast, 9.
's fiat during Court nd Office holidays.	The want of power to act on a Judge's fiat during Court and Office holidays should be corrected.	Sergeant Armstrong, 12.
of sale under an exe-ution.	If an execution be issued, a seizure of the debtor's goods must be made by the Sheriff, and an actual sale had thereunder; otherwise an act of bankruptcy by the debtor would deprive the creditor of the fruits of his execution. We are of opinion that a *bona fide* seizure by the Sheriff, provided the sale be had within a reasonable time, should prevail against an act of bankruptcy committed subsequent to such seizure. Instances are within our knowledge in which the present system has been a great hardship upon the debtor by reason of the hurried sale of his goods, and it generally entails serious loss to the creditor, inasmuch as due publicity is not given to the sale.	Northern Law Club, Belfast, 6.

ffice of the Commission, Four Courts, Dublin, 20th January, 1863.

(Signed), W. Neilson Hancock, *Secretary.*

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9. Return of Rochfort Battley, Esq., Clerk in the Writ and Seal Office of the Courts of Common Law in Ireland, showing—

Common Law.

Rochfort Battley, Esq.

Return of Writs issued from Writ and Seal Office of Courts of Common Law, Ireland.

1. The Number of Writs issued on each Day of the Month in the Year ending 18th April, 1863, during which the smallest Number of Writs were issued.

2. The Number of Writs issued each Day of the Week in the same Year, during which the greatest Number of Writs were issued.

1. Return of Number of Writs for the Month of September, 1862—Minimum in vacation.

Day of Month.	No. of Writs.	Day of Month.	No. of Writs.	Day of Month.	No. of Writs.
1st,	29	11th,	22	22nd,	28
2nd,	24	12th,	39	23rd,	33
3rd,	30	13th,	19	24th,	42
4th,	32	15th,	38	25th,	34
5th,	34	16th,	29	26th,	36
6th,	25	17th,	32	27th,	38
8th,	25	18th,	36	29th,	31
9th,	27	19th,	28	30th,	49
10th,	40	20th,	31		

2. Return of Writs for one Week (Maximum), 3rd January, 1863.

Day.	No. of Writs.	Day.	No. of Writs.
3rd,	303	7th,	62
5th,	104	8th,	53
6th,	92	9th,	64

(Signed), Rochfort Battley.

Writ Office, 18th April, 1863.

Common Law.

10. Papers on Practice and Procedure, Crown Side of Queen's Bench in Ireland.

Crown Side of Queen's Bench.

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Answers relating to the Practice and Procedure.

Sir Colman M. O'Loghlen Bart., Q.C.

1. Further Answers relating to the Practice on the Crown Side of the Queen's Bench in Ireland, by Sir Colman M. O'Loghlen, Bart., Q.C.

The practice on the Crown side of the Queen's Bench in Ireland requires regulation and amendment. The whole course of procedure is antiquated, and its expense to the suitor is very great.

The following are a few points in relation to the subject, to which I wish to call the attention of the Commissioners.

1st.—There are no published rules regulating the practice on the Crown side of the Queen's Bench in Ireland. Much of the present practice depends on tradition, and can only be learned on inquiry in the office. In England there are a set of published rules regulating the practice of the Crown side of the Queen's Bench there. These rules have been framed by the Judges of the English Queen's Bench in pursuance of an English Act, 6 & 7 Vict., c. 20, s. 16.

2nd.—In Ireland, rules to plead on the Crown side of the Queen's Bench run in term only; in England these rules run in vacation, as well as in term. In Ireland all rules to plead in Crown cases, except cases of *quo warranto*, are four-day rules, and in *quo warranto* they are six-day rules. In England all rules to plead in Crown cases are ten-day rules, with the exception of *quo warranto* cases, and in these latter the rules to plead are eighteen-day rules.

3rd.—According to the present practice of the Crown Office in Ireland, parties are required to take out attested copies of all pleadings and affidavits that may be filed, whether they want them or not, and are not allowed to take any step in their cases till they take out these copies. Parties are even required to take out attested copies of their own pleadings and their own affidavits. These copies are all charged for at the rate of 8*d.* a folio. The office pays 1½*d.* a folio for the scrivenery, and the difference between the cost and the charge goes into the Imperial Exchequer.

This practice, I believe, is a very ancient one, but it appears to me to be clearly illegal since the 2 Wm. IV., c. 48, an Act to regulate the office of Clerk of the Crown in the Queen's Bench in Ireland.

The 21st section of that Act enacts—"That no suitor in the said Court, nor any other person, shall, *in any case*, be required to take out any copy of any record, pleading, information, indictment, writ, return, deposition, affidavit, or other document or proceeding whatsoever, *and the taking or not taking any copy whatsoever* shall be *entirely optional*."

How the continuance of the present practice can be reconciled with this enactment I cannot understand.

4thly.—No one can administer an affidavit on the Crown side of the Queen's Bench in Ireland but the Clerk of the Crown. If he be in attendance in Court, parties requiring to swear affidavits must attend him in Court. The Chief Clerk in the office should have the power of administering oaths.

5thly.—Motions on the Crown side of the Queen's Bench in Ireland cannot be moved in the Consolidated Chamber, except when a Judge of the Queen's Bench sits. This is very inconvenient in practice.

In addition to these matters, to which I beg to call the attention of the Commissioners, I would suggest that the pleadings and practice in *mandamus* and *quo warranto* cases should be simplified; and that, as they are in fact civil actions for the trial of civil rights, they should be, so far as the pleadings are concerned, assimilated in all respects to ordinary actions.

Colman M. O'Loghlen.

April 17th, 1863.

Copy of Letter from Secretary of Commission to Clerk of the Crown.

2. Copy of Letter from W. Neilson Hancock, LL.D., Secretary to the Commission, to James Nagle, Esq., Clerk of the Crown in Ireland, as to Statements in preceding Answers.

Law and Chancery Commission,
Four Courts, April 15, 1863.

Sir,—I am directed by Her Majesty's Commissioners for Inquiring into the Superior Courts of Common Law and the Courts of Chancery in England and Ireland, to state that the Commissioners have been informed that according to the present practice of the Crown Office in Ireland, parties are required to take out attested copies of all pleadings and affidavits that may be filed, whether they want them or not, and are not allowed to take any steps in their cases until they take out these copies; that parties are even required to take out attested copies of their own pleadings and their own affidavits; that these copies are all charged for at the rate of 8*d.* a folio, the office paying 1½*d.* a folio for the scrivenery, and the difference between the cost and the charge going into the Imperial Exchequer; that this practice, which is stated to be a very ancient one, is complained of as being inconsistent with the 21st section of 2nd Wm. IV., c. 48, which enacts "That no suitor in said Court (of Queen's Bench in Ireland), nor any other person, shall, in any case, be required to take out any copy of any record, pleading, information, indictment, writ, return, deposition, affidavit, or other document or proceeding whatsoever, and the taking or not taking of any copy whatsoever, shall be entirely optional." Under these circumstances, the Commissioners desire me to inquire what is the present practice of the Crown Office in Ireland in the matter above referred to, and on what statutable or other authority such practice rests.

Your obedient servant,

(Signed) W. Neilson Hancock,
Secretary.

James Nagle, Esq., Clerk of the Crown,
Crown Office.

Copy of Reply from Clerk of the Crown.

3. Copy of Reply of Clerk of the Crown to preceding Communication.

The Crown Office, Ireland, Queen's Bench,
Dublin, 9th May, 1863.

In compliance with the requisition of Her Majesty's Commissioners for Inquiring into the Superior Courts of Common Law and the Courts of Chancery in England and Ireland, of the 15th April last, I have the honour to state the practice of the Crown side of the Court of Queen's Bench in Ireland, with reference to documents upon which attesting fees are charged.

1. *Affidavits.*—The practice is, that all affidavits to be used in Court shall be filed in the Crown Office beforehand. That motions or other proceedings be moved upon attested copies of such affidavits.

* See Answers, Appendix A., p. 112.

2. Upon being served with a rule or other proceeding Nisi, the defendant, if he intends to show cause, bespeaks office copies of the documents grounding same. Until this practice is complied with, his cause affidavits are not received. Of his own affidavits, if to be used in Court, he also obtains attested copies, as coming under paragraph 1.

3. The prosecutor obtains office copies of such cause affidavits.

4. *Generally.*—Before answering affidavits are received, whether as cause, as in paragraph 2, or when by leave of the Court, as supplemental, in support of original affidavits, and in reply to those filed as cause, the party relying on same takes office copies of the affidavits which he answers.

5. The party who files such supplemental affidavits takes out office copies, the Court generally requiring, as a condition precedent, that he shall furnish to his adversary scrivenery copies.

6. *Pleadings.*—A party takes office copies, not of his own, but only of his adversary's pleading, unless he chooses for some particular reason to do so, which very rarely occurs.

7. The attesting fee of 8*d.* per folio is that prescribed by the schedule annexed to 2nd Wm. IV., c. 48; and 1½*d.* per folio being allowed, as amongst the incidental expenses of the office for scrivenery, the residue is transferred to the credit of the Imperial Exchequer, in the manner directed by the above Act.—*Vide* my Return of Fees, &c., of the 31st July, 1862.

8. I can quote no authority, statutory or other, in support of the practice here stated, than that it is—to use the words recited in the Commissioners' communication—"a very ancient practice," continued to the present time; and my experience is that the 21st sec., 2nd Wm. IV., c. 48, worked no alteration in what was the antecedent practice, no doubt owing to the absence of a provision analogous to that recently introduced at the civil or plea side of the Court—that on the filing of any pleading, affidavit, document, or proceeding, of which it shall be necessary to give notice, the party filing same shall cause to be served and delivered, together with the notice thereof, a true copy of such pleading, &c.; and it shall not be necessary for either party to take out or produce in Court, or before any Judge or Baron in chamber, an attested copy of such pleading, &c. And it is believed, that in cases at the civil or plea side, not coming within the provision referred to, such as Rules Nisi, &c., obtained without notice, and which may be classed under paragraph 2 of this return, the practice is analogous to that there stated—viz., "the defendant, if he intends to show cause, bespeaks office copies of the documents grounding order, &c.," paying a Law Fund Duty of 4*d.* per folio.

COMMON LAW.

CROWN SIDE OF QUEEN'S BENCH.

9. And, from what precedes, it will be seen that, at the Crown side, the only means by which a suitor can become acquainted with what he has to answer is by availing himself of the right which conformity with the practice of the Court [par. 2 and 6] confers—and all the more essential to him in the case of pleadings, in which the utmost exactness is required on both sides.

Copy of Reply from Clerk of the Crown.

10. It may be further remarked that the Judges frequently call for attested copies of affidavits, at both sides, during the progress of cases in Court, and, in many instances, bring those copies home for more careful perusal, when considering important judgments.

11. And, though suitors complain against the rate of 8*d.* a folio as too high, I know of no instance in which the practice, as in this return set forth, has been questioned or excepted to, as the usage of the Court, save that in Hilary Term, 1856, in "The Queen *v.* the Commissioners of Public Works," the prosecutor—having obtained leave to file a supplemental affidavit in support of a conditional order, and in reply to the cause affidavit—claimed to be exempted from compliance with the practice stated in paragraph 3, on the grounds that the defendants themselves, having conformed to the usage stated in paragraph 2, had furnished or accommodated the prosecutor with a copy of their affidavit; and the Clerk of the Crown, as the conserver of the practice as to his department, having declined to receive such supplemental affidavit until the prosecutor should comply with the usage stated in paragraph 3, the prosecutor moved the Court, upon notice, that the officer should be directed to receive his supplemental affidavit under the circumstances; and the Court, having heard counsel on the prosecutor's behalf, disallowed the exemption, and refused the application.

It may not be inappropriate to observe, that proceedings at the Crown side of the Queen's Bench are exempted from Law Fund Duty.

JAMES NAGLE,

Clerk of the Crown, Coroner and Attorney to the Queen, and Master of the Crown Office, in Ireland.

APPENDIX B.—PAPERS on EQUITY PRACTICE and PROCEDURE.

EQUITY.

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CIRCULAR respecting EQUITY PRACTICE and PROCEDURE addressed to the LORD CHANCELLOR of IRELAND, the MASTER of the ROLLS in IRELAND, and the MASTERS in CHANCERY, and also to the JUDGES of the COURTS of QUEEN'S BENCH, COMMON PLEAS, and EXCHEQUER in IRELAND, the JUDGES of the LANDED ESTATES COURT, and the JUDGES in BANKRUPTCY.

FORM OF CIRCULAR.

Form of Circular to Judges as to Practice and Procedure

Law and Chancery Commission Office,
Four Courts, Dublin, —— day of —— 1862.

I am directed by Her Majesty's Commissioners for inquiring into the Superior Courts of Common Law and the Courts of Chancery in England and Ireland to forward to you the enclosed statement on Equity Practice and Procedure, prepared for the Commissioners by Messrs. Barber and Jellett.

I am, at the same time, to forward to you the questions which the Commissioners have addressed to Irish Barristers, having considerable experience in Equity Practice and Procedure, and to the Councils of Societies of Attorneys and Solicitors in Ireland.

I am directed by Her Majesty's Commissioners to state that they will be glad to receive, and pay every attention in their power to any observations which it may occur to you to make in reference to the subject of the Statement and Questions.

I have the honour to be,
Your obedient servant,
(Signed), W. NEILSON HANCOCK,
Secretary.

To——

EQUITY.

2. ANSWERS to PRECEDING CIRCULAR.

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Observations on Practice and Procedure.

1. OBSERVATIONS on EQUITY PRACTICE and PROCEDURE in REPLY to above CIRCULAR. Right Hon. T. B. CUSACK SMITH, Master of the Rolls in Ireland.

Right Hon. T. B. Cusack Smith, Master of the Rolls in Ireland.

Instead of answering seriatim the questions put to me by the Commissioners for inquiring into the Practice of the Courts of Common Law and the Courts of Chancery in England and Ireland, I shall state some of the most material distinctions between the practice of the Courts of Chancery in England and Ireland, and in what cases the Irish practice is to be preferred, and in what cases the English practice is the best.

In Ireland a suit is commenced by cause petition; in England by bill. In Ireland the old proceeding by bill (which differs materially from the present proceeding in England by bill), might be adopted, with the statement, pretences, charges, and interrogatories; but in practice bills are not filed in Ireland, as it is well known that if a bill was filed, the Court would allow no more costs to a successful plaintiff than if the proceeding had been by cause petition.

The cause petition in Ireland, and the bill filed in England under the 15th and 16th of the Queen, c. 86, s. 10, should contain, as concisely as may be, a narrative of the material facts. The cause petition in Ireland is, however, verified by a short form of affidavit, which will be found in the schedule to the Court of Chancery (Ireland) Regulation Act, 1850. I think the verification of the cause petition by the short form of affidavit is of advantage, as it renders it necessary that the petitioner should read the petition before it is filed, and if his instructions to his solicitor have been misunderstood, an opportunity is afforded of having any errors corrected before the filing of the petition.

The bill in England is printed (15 and 16 Vic., c. 86, s. 1), and the defendant is served with a printed copy, instead of being served with a subpœna; in Ireland notice of the cause petition is served, and is in the form stated—pages 80 and 81 of Mr. Jellett's statement. I am of opinion that the English practice of printing the bill, and serving a printed copy of the bill on the defendants, is the best practice. The practice could be adopted by a general order, and applied to proceedings by cause petition.

In England, the defendant or defendants may demur or plead to the bill; in Ireland a demurrer or plea cannot be put in to the cause petition. I entertain a clear opinion that the practice in Ireland is the best in that respect, and that the Commissioners will inflict a grievous injury on Irish suitors if they recommend the reintroduction of demurrers and pleas in Ireland. I have stated the grounds of my opinion on this subject in a pamphlet, a copy of which I have already sent to the Commissioners, and which pamphlet I am responsible for.* It is not necessary to do more than refer to the pamphlet.

In Ireland, if the respondent does not file an affidavit by way of answer, the petition and the statements contained in it, are considered to be admitted, unless the respondent, or any respondent, is under disability, in which latter case, the petitioner should prove his case; in England, if the defendant does not file an answer, he is considered to have traversed the case made by the bill. I think the Irish practice is in this respect the best.

In Ireland, the respondent, if he files an affidavit, or affidavits, must file his affidavit by way of answer, and his affidavits by way of evidence, within four weeks from the service of the cause petition, or before the petition shall be set down to be heard, unless the time be extended by the Court. (See General Orders of 13th of June, 1856).

This is a most objectionable practice, and I declined to sign the General Orders establishing it. The petitioner has three weeks time, after the respondent's affidavits have been filed, to file affidavits in support of the matters stated in the petition, and the respondent may, within fourteen days after the petitioner has filed his affidavits, file affidavits by way of rejoinder to any new matter contained in the affidavits in reply. The whole of this system is objectionable. In the first place, it is clear that there should be an affidavit by way of answer, by the respondent or respondents, which should be in the nature of a pleading, corresponding with the answer by way of affidavit filed in England. To require a respondent to put in his affidavit by way of answer, and his proofs contemporaneously, is a monstrous practice, and leads to the greatest injustice.

The result of the Irish practice of successive affidavits by each party is, that each party (in many cases) considers how far he may screw up his conscience and outswear his adversary.

The practice in England, where a suit is proved by affidavit, is in accordance with the principles of justice and common sense, which the Irish practice is not.

The practice in England (where the cause is heard on affidavit) appears to be this—after the defendant has filed his answer, a time is limited within which the affidavits on both sides are to be filed. Both parties may abstain from filing affidavits until immediately before the time for closing the evidence has expired. Each party thus files affidavits in support of the matters put in issue by each respectively, without either party being aware of what is stated in the affidavits of the adversary. The English practice is very clearly explained in the case of Thompson *v.* Partridge, 4 De Gex., M'Naghten and Gordon, 794. Justice cannot be properly administered in Ireland until the English practice in this respect shall be adopted. I have already observed that I am in no way responsible for the Irish practice, having, from the outset, expressed my disapproval of it. The English practice could be adopted before Easter term by general orders, and I am clearly of opinion it ought to be adopted.

Another mode of proving a case in Ireland is by a *vivâ voce* examination before an Examiner (see 11th General Order of 19th May, 1857). That is, I believe, the usual course of proving the case of each party in England, under the 31st section of the 15th & 16th Victoria, c. 86. I do not approve of that practice, and do not make orders at the Rolls for the examination of witnesses *vivâ voce* before the Examiner. It has always appeared to me that if there is to be a *vivâ voce* examination, it should be before the Court. According to the course of practice at the Rolls, if counsel consider (in consequence of the affidavits being irreconcilable, or from any other cause) that the witnesses should be examined *vivâ voce*, or if a witness or witnesses has or have declined to make affidavits, a notice of motion is served for an order for the examination at the hearing of the witnesses *vivâ voce*. I do not recollect ever having refused to make the order, as I have found by experience that counsel do not make the application unless in proper cases. The names of the witnesses are stated in the order. The effect of making an order *before* the hearing is that it saves the expense of hearing the case twice. When there is an order for a *vivâ voce* examination, I require the

* "Law Reform: Transfer of Land." Saunders and Otley, London, 1852; pp. 79 to 91.

the parties should employ a short-hand writer, agreed on by both, so that in the event of an appeal, there shall be an accurate note of the evidence. I do not recollect there ever having been an appeal against a decision of the Rolls on a mere matter of fact, which shows that the practice has worked well. I believe the practice in England is, not to make an order for a *viva voce* examination before the Court, unless at the hearing of the cause. The English practice leads to unnecessary expense and delay.

It happens (not unfrequently), from the objectionable system as to filing affidavits in Ireland, to which I have adverted, that the Court feels obliged, at the hearing of the cause, to order the attendance of the parties who have made affidavits, in order that they should be examined *viva voce* before the Court.

I always fix a day for this examination convenient to both parties, to prevent the expense of keeping country witnesses in Dublin. I should not approve of the adoption of the English practice, of having witnesses examined *viva voce* before the Examiner. It would greatly increase the expense of proceedings in the Court of Chancery in Ireland, as the Examiner would have no power to decide on the admissibility or relevancy of the evidence; and an examination would occupy days before the Examiner, which would not occupy as many hours before the Court. The success of the system of a *viva voce* examination before the Court in Ireland has arisen, no doubt, very much on the ground that the leading barristers at the Rolls do not waste time.

The next subject to be considered is the question of parties to suits. That subject was considered by me in the pamphlet to which I have referred, pages 91 to 101.

The Irish practice is in this respect much better than the English practice; and great injustice will be done to the Irish suitor if the English practice be introduced into Ireland in that respect.

Under the 1st section of the Court of Chancery (Ireland) Regulation Act, notice of the petition is served on such persons as the petitioner thinks fit, with power to the Court from time to time to direct any further service of the petition. Some of the general orders provide as to who are to be made respondents in particular cases (*e. g.*, 11th and 12th General Orders of 1851), but the rule in general is, that such persons only as the petitioner's counsel think ought to be respondents are made so.

It seldom happens that any person materially interested in the suit is not made a respondent; and a mere technical objection for want of parties cannot in Ireland delay a suit as in England. If it is suggested at the hearing of the cause in Ireland, that some persons who ought to be parties to the suit have not been made parties, the Court does not postpone the hearing on such objection unless the person or persons not parties have some material interest in the suit; and it is quite impossible in Ireland to make a *technical* objection for want of parties. The Court in Ireland, as a general rule, hears the cause notwithstanding the objection, and makes a decree, and directs a notice to be served, under the 32nd General Order of 1851, on the person who it is said should have been a respondent, which notice states very concisely the dates and short particulars of the proceedings, and the decree, if any; and the notice concludes thus:—"Now, you are hereby required to take notice that you are at liberty to inspect copies of said several proceedings at my office (*i.e.* the office of the petitioner's solicitor, whose name and address are at foot of the notice); and you are further to take notice, that under the 1st section of the said Act [illegible] the Court of Chancery (Ireland) Regulation Act, 1850), and under the 32nd of the General Orders of the 31st July, 1851, you will, by the service of this notice, be bound by the several proceedings already had, or to be hereafter had in this matter, unless in fourteen days after service hereof you shall show good cause to the contrary."

I have never known but one instance in which cause was shown after the service of this notice. The power which the Court of Chancery in Ireland has of making a person a respondent at any period of the suit by the service of a notice, under the 32nd General Order of 1851, has put an end to the system of technical objections for want of parties. Great injury will be done to the Irish suitor, and great delay and expense caused, if the English practice as to parties to suits be adopted in Ireland.

The practice in Ireland as to the dismissal of suits for want of prosecution is much better than the English practice. The dismissal by lapse of time in Ireland, without any application to the Court, renders it impossible to delay suits which are not referred to the Master, under the 15th section of the Court of Chancery (Ireland) Regulation Act, 1850. Suits referred under that section are sometimes several years in the Master's office.

With respect to proceedings before the Masters, under the 15th section of the Court of Chancery (Ireland) Regulation Act, 1850, I think the general opinion of the profession is against those proceedings, and that is my opinion. There are some cases reported on appeal to the Rolls, which show the disregard, in some cases at least, of the rules of pleading, evidence, and procedure, in cases referred under the 15th section. This, I think, has arisen in part, at all events, from the course which has been adopted of referring many cases to the Masters under that section, which, I believe, it was never contemplated by Sir John Romilly, who introduced the measure in the House of Commons, should have been so referred, and an undue and unreasonable amount of the business of the Court has been thrown upon the Masters.

The course of practice of referring cases to the Master under the 15th section has been this:—the 15th section causes are set down every Saturday for hearing before the Lord Chancellor, and are set down *as causes*, which of course leads to much unnecessary expense. The order of the Lord Chancellor simply refers it to the Master to consider the matter of the petition, and proceed thereon according to law.

Many cases are, I believe, referred to the Master, which do not fall within the 15th section; but although the Masters have no jurisdiction whatever under the 15th and 16th sections, except in cases which are within these sections, or the General Order founded thereon; yet the Lord Chancellor holds that the Masters cannot enter into the question, but are bound by the order of his lordship.*

Causes under the 15th section should not be heard before the Lord Chancellor at all, either as causes or motions.

The proper course would be, for counsel who prepares the petition, to certify at foot, that the case, in his opinion, falls within the 15th section, and on such certificate the registrar could make an order referring the cases in rotation to the Masters, and the question would then be open to the Masters to decide that the case did not fall within the 15th section, and they might decline to hear the case.

At present the Masters are, I believe, frequently hearing cases, as if under the 15th section, which they have no jurisdiction whatever to hear; but they consider themselves bound to hear all cases referred under the order of the Lord Chancellor.

However, the question still remains, whether the office of Master should be retained, or whether the practice in England under the Masters in Chancery Abolition Act, should be adopted in Ireland.

Although the adoption of such proceedings would increase the Rolls business, I am bound to admit, I consider that, in this respect, the English practice is the best. Observations on the subject of the Masters in Chancery Abolition Act will be found in

* See cases referred to by Mr. Gamble, in his work, page 269.

EQUITY.

Observations on Practice and Procedure.

Right Hon. T. B. Cusack Smith, Master of the Rolls in Ireland.

the pamphlet to which I have referred, pages 54 to 63, a copy of which has been sent to the Commissioners. There are other matters in relation to Chancery procedure in that pamphlet to which I should wish to call the attention of the Commissioners, but it is sufficient to refer to the pamphlet and not to repeat the matters there stated in reference to Chancery reform.

It has been rumoured that the Commissioners intend to throw upon the Master of the Rolls and the Vice-Chancellor (who of course must be appointed if the office of Master be abolished) the winding up of the arrear of business in the Masters' offices. This would be a most unreasonable proceeding, and would prevent the measure working well. It would require a great deal of trouble to organize a system which would prevent the great delay which at present takes place in the Masters' offices, and if the Chambers of the Master of the Rolls and the Vice-Chancellor are to be swamped at the outset by transferring the arrear of business in the Masters' offices to them, the measure will be a failure.

I believe I have substantially answered the queries put to me by the Commissioners. The queries were only sent to me on the 4th November, 1862, and I have been too much hurried to answer them sooner. If I have omitted to answer any question, I shall be happy to give any further information which may be required.

(Signed), T. B. CUSACK SMITH.

Dec. 29, 1862.

Edward Litton, Esq., Master in Chancery.

2. OBSERVATIONS on EQUITY PRACTICE and PROCEDURE in reply to above CIRCULAR. EDWARD LITTON, Esq., Master in Chancery.

Master in Chancery's Chambers,
Four Courts,
December 6, 1862.

SIR,—In reference to your letter of the 4th of November last, which I have had the honour to receive, I have but to state, that the provisions of the English Chancery Acts of 1852, and the other statutes respecting the jurisdiction, practice, and procedure of the Court of Chancery in England, now peculiar to England, might, in my opinion, be most advantageously extended to Ireland.

I further venture to express an opinion, that the system of equity proceedings, now adopted in England, is as nearly perfect as it could well be.

I have the honour to subscribe myself, Sir, your obedient and faithful servant,

(Signed) EDWARD LITTON.

To W. Neilson Hancock, Esq.,
Secretary.

William Brooke, Esq., Master in Chancery.

3. OBSERVATIONS on EQUITY PRACTICE and PROCEDURE in reply to above CIRCULAR. WILLIAM BROOKE, Esq., Master in Chancery.

Master's Chambers, Four Courts,
Dublin.

SIR,—In reply to your letter of the 4th instant, in which you state that the Commissioners for inquiring into the Superior Courts of Common Law and Chancery are willing to receive any observations which it may occur to me to make in reference to the subject of a statement and questions enclosed in your letter, I beg leave to submit for the consideration of the Commissioners the following observations, which are meant to apply only to the practice of the Masters' offices, since the passing of the Chancery Regulation Act, 1850.

1. Our greatest want has been the deficiency of information for the practitioner's guidance, and the most valuable of all reforms would be the adoption of the practice of the English Court of Chancery, with its precise rules and printed decisions. Since 1850 we have been like travellers without a chart. The Act of that year, sec. 17, empowered the Master, without reference to any rule or course of practice of the Court, save as by the Act provided, to regulate the course of proceedings as he might think expedient for rendering the same speedy and inexpensive, so far as justice would admit. So vast a power exercised by five Judges, whose decisions are not reported, nor even known in the other Masters' offices, though hitherto exercised, I believe, with great caution and moderation, cannot but have led to much diversity of practice and caused great perplexity, of which both counsel and solicitors frequently and justly complain. The obvious remedy is to bring us under the control of English authorities, which are accessible to all; and if there be any particulars in which our system is superior to the English, we would gladly surrender the advantage, if we could thereby obtain the benefit of fixed and known rules of procedure.

2. I can hardly express too strongly my conviction of the worthlessness of affidavits in any case of conflicting evidence, unless there has been the utmost facility for a *viva voce* cross-examination of the witness. It is, doubtless, much more easy for a judge to make up his mind, and to justify his decision, when the whole case is before him on written evidence, but that is not the way to get at the truth of difficult questions of fact. My experience has convinced me that uneducated persons in making an affidavit are not always aware of the solemn nature of the act. And, even in the case of witnesses of a superior class, a skilfully drawn affidavit will often disguise and conceal the facts which are most important to be known to the Court. On these grounds I do not approve of the English Rule (which has apparently been adopted by the 13th Rule of our Court, dated 19th May, 1857), which throws on the cross-examining party, in the first instance, the costs of compelling the witness to attend for cross-examination. In order to avoid what seemed to me inexpedient in this Rule, I have ventured to exercise the discretion given to me by the same Rule, by always refusing leave to use affidavits at the hearing of a cause, unless the party, on whose behalf they are to be made, undertakes to produce at the hearing, at his own expense, his witness for cross-examination, in case I shall direct him so to do. I have found this practice to work very satisfactorily, and to afford, in my opinion, a corrective of the evils to which I have above alluded.

I may mention, as an illustration of the little value of testimony by affidavit, the case of a reference before me to inquire and report whether the accommodation provided for a lunatic by his Committee had been suitable. Two gentlemen of character stated, by affidavit, that they had visited the lunatic on a certain day, and examined his apartment, furniture, &c., and that his bed-chamber was large and airy. On cross-examination, *viva voce*, they admitted that, on the day stated, they had found him in a small, ill ventilated room; upon which they remonstrated with the Committee. The Committee immediately took them to a large airy chamber, and promised them that from that hour the latter should be the lunatic's sleeping apartment; and they stated that their affidavit was intended to apply to the so promised bedroom, which from the moment of the promise they might fairly speak of as the lunatic's room. It further appeared in the case, that the lunatic slept but one night in the substituted room, after which he went back to his old quarters. It was the third

attempt to remove this Committee. One before Lord Plunket, and one before Lord St. Leonards, had each been triumphantly defeated by the weight of affidavits, and the third must have had the same result, but for the *viva voce* examination.

I remember another instance in point, a markswoman on cross examination *viva voce*, before me, contradicted her affidavit in every particular. On being taxed with the inconsistency, she expressed great surprise, stating that she had made an affidavit at the solicitor's request, and that it had been previously read over to her, but that she had not understood a word of it!

3. But *viva voce* examination, in order to be effective, must be before the Court, and not the Examiner. Beyond any other proceeding in the administration of justice, it requires the controlling presence of a Judge, who can decide upon objections to evidence and to the relevancy of questions asked by counsel. Without this, it would, I fear, in many cases degenerate into a very stormy scene and much unprofitable wrangling; but a still greater advantage arising from cross-examining the witnesses before the Court is the opportunity it affords to the Judge to become acquainted with the demeanour of the witnesses—an advantage which no Judge, who has experienced how much it aids the discovery of truth and the attainment of justice, would willingly forego.

4. It is a serious question how to take down and preserve *viva voce* testimony given before the Judge. The 10th General Order, of 3rd January, 1859, assumes that a barrister may be appointed as a shorthand writer, and provides for payment of his fee. I understand the Lord Chancellor has decided that it is not of necessity that the shorthand writer should be a barrister. It seems unsettled by whom the selection is to be made, if the parties differ about it. The character of a barrister is an important safeguard, and it would be a serious danger to permit a party, without any check, to bring in any reporter he pleases.

I should much prefer a certain number of properly qualified barristers to be nominated by the Lord Chancellor, who should be employed in rotation, and who should be paid not by the length of their report, as now, but by the time occupied in *viva voce* examination. He should lodge his report with the Registrar of the Court, from whose office attested copies might be obtained in the usual manner. The course adopted under the 10th Rule of January, 1859, already referred to, gives the reporter a direct interest in making his report as prolix as possible, thus suggesting a ready and coarse imputation against him, however undeserved, to which no honourable man ought to be unnecessarily subjected.

I collect from your letter that it is not the wish of the Commissioners that I should give my opinions in detail upon the course of practice in the Irish Court of Chancery. I have, therefore, confined myself to a few observations upon matters that seem to me of the greatest importance.

I am, Sir, your obedient servant,

(Signed) WILLIAM BROOKE,

Nov. 1862. *Master in Chancery.*

W. N. Hancock, Esq., Secretary,
Com. for Inquiring into the Superior
Courts of Law and Chancery.

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3. QUESTIONS respecting EQUITY PRACTICE and PROCEDURE, addressed to IRISH BARRISTERS having considerable experience in EQUITY PRACTICE and PROCEDURE, and to the COUNCILS of SOCIETIES of ATTORNEYS and SOLICITORS in IRELAND.

FORM OF CIRCULAR.

Form of Circular to Barristers and Solicitors as to Practice and Procedure.

Law and Chancery Commission,
Office, Four Courts,
Dublin, —— day of —— 1862.

SIR,—I am directed by Her Majesty's Commissioners for Inquiring into the Superior Courts of Common Law and the Courts of Chancery in England and Ireland to forward to you the annexed Paper of Questions respecting Equity Practice and Procedure, and to request that you will favour the Commissioners with answers to the questions therein contained. I am also to request that you will transmit your answers to this office before the day of

I enclose a copy of the Commission, and of Messrs. Barber and Jellett's statement on Equity Practice and Procedure.

I am, Sir, your obedient servant,

(Signed), W. NEILSON HANCOCK,
Secretary.

To——

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1. What is the result of your experience, and what is your opinion of the working of the present system of proceeding by cause petition and affidavits in the Courts of the Lord Chancellor and Master of the Rolls, in Ireland, under the Irish Chancery Regulation Act of 1850?

2. What are the changes (if any) in the present system of proceeding by cause petition and affidavits in the said Courts which you would suggest?

3. What is the result of your experience, and what is your opinion of the working of the jurisdiction which Masters exercise in Ireland, under the 15th section of the Irish Chancery Regulation Act?

4. What is your opinion as to the present system of taking evidence in the Court of Chancery and in the Masters' offices; and are you of opinion that any and what changes should be made therein?

5. What are the changes (if any) in the present system pursued in the offices of the Masters, where they exercise jurisdiction under the 15th section of the Irish Chancery Regulation Act, which you would suggest?

6. Is the practice uniform in the offices of the different Masters in cases under the 15th section of the Irish Chancery Regulation Act? If not, specify such differences as have come under your observation?

7. What is the result of your experience, and what is your opinion of the present working of other parts of the practice and procedure of the Court of Chancery in Ireland under the Irish Chancery Regulation Act of 1850?

8. What are the changes (if any) in such other parts of the practice and procedure of the Court of Chancery in Ireland which you would suggest?

9. Are there any provisions of the Irish Chancery Regulation Act of 1850, or other statutes respecting the jurisdiction, practice, or procedure, of the Court of Chancery in Ireland, now peculiar in Ireland, which might, in your opinion, be advantageously extended to England?

10. Are there any provisions of the English Chancery Acts of 1852, or other statutes respecting the jurisdiction, practice, or procedure, of the Court of Chancery in England, now peculiar to England, which might, in your opinion, be advantageously extended to Ireland?

11. Are there any other parts of the law and practice of the Court of Chancery common to both England and Ireland, with respect to which you have changes to suggest?

12. Can you specify instances within your knowledge to illustrate the views you have stated in your answers to the foregoing questions?

EQUITY.

Answers as to Practice and Procedure.

4. ANSWERS of BARRISTERS* to PRECEDING CIRCULAR, viz.:

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Edward Sullivan, Esq., Second Serjeant-at-Law.

1. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. EDWARD SULLIVAN, Esq., Second Sergeant-at-Law.

In my opinion, the working of the present system of proceeding by general cause petition and affidavits in Ireland, has been unsatisfactory. For a considerable period after the introduction of the system the utmost confusion and the loosest practice prevailed, and these continued long subsequently to the time at which they should have ceased, if they were to be regarded simply as the natural or unavoidable consequences of a new state of things; in fact, they have not yet been entirely removed, and they seem to me to exist as incident to the present system of Equity procedure. I think that this result has been mainly owing to the mode in which evidence by affidavit was allowed to be given, and to the great facility afforded by the Court of Chancery, from time to time, to litigants of filing affidavits at any stage of the cause, even to the almost total abandonment of the General Orders, which restrained the filing of such affidavits within certain limits. I think that it is highly objectionable to allow sets of affidavits on one side to be perpetually answering sets of affidavits on the other. It is not an uncommon thing to see, in cause petition suits, every single statement put forward affirmatively in the affidavits filed on behalf of one party met by affidavits filed on behalf of the other party, in direct and detailed denial; indeed, the instances are rare in which such a state of things does not exist. The materiality of their respective statements is not often even considered, the parties seeming more bent on wholesale and sweeping denial than on anything else. I have no hesitation in saying, that the amount of false swearing apparent on the face of affidavits filed in this manner is shocking. The Master of the Rolls has endeavoured, in every possible way, to arrest and lessen the evils of this system of making and filing affidavits; and hearing cause petitions from time to time, he has had frequent *viva voce* examinations of all the witnesses in open Court (the evidence being taken by a short-hand writer), and a mere cursory glance, in any given case, at the report of the evidence so taken, and at the affidavits sworn by the same persons as were examined, would furnish the strongest argument against a continuance of the present system. I am quite aware that any system of taking evidence by affidavit must be defective; however, I think that the present system can be altered, so as to give far less encouragement to false or rash swearing, and to work advantageously for the administration of justice. The mode of procedure which I am in favour of is—that on the answering affidavit being filed and notice thereof served, each party should have a given time, by which they should be at liberty to support their respective cases by affidavit. After the lapse of this time, no affidavit should be permitted to be filed; neither party should see the affidavits of the other party, or know of their contents until after the time so fixed had passed by. That the cause should be set down for hearing within some reasonable time after the day by which the affidavits should be filed, or otherwise, it should stand dismissed, with costs; and as some persons may refuse to make affidavits, either party should be at liberty to compel the attendance of anyone so refusing, before the Examiner of the Court, previously to the day fixed for filing affidavits, to be examined, *viva voce*, and *ex parte*, and this examination, as taken by the Examiner, should stand in the same way as the witness's affidavit would have done had he made one. Either party should be at liberty to apply to cross-examine, at the hearing, the witnesses of his adversary; and the Court should have unlimited power of its own motion to compel the examination or cross-examination at the hearing, or any stage of it, of all or any of the witnesses. I think cross-examination before the Examiner of the Court ought to be abolished. There is not much novelty in this mode of procedure, but it has struck me as one calculated to meet, in a great degree, the difficulties of the case, and as one which would be an immense improvement on the present system. I think that the plaintiff's pleading, whether to be called a bill or petition, ought to be verified on oath; and all affidavits ought to be in the first person; the time now allowed in Ireland for answering is too short, and it ought to be extended. No admission or conversation ought to be allowed to be given in evidence, without being expressly put in issue and stated in the petition or answering affidavit. No demurrer *ore tenus* ought to be allowed; the defendant should be required to put forward his case either by demurrer in writing, plea, or answer.

I think that the giving of the jurisdiction under the 15th section of the Chancery Regulation Act, 1850, was a complete miscarriage; besides, I am satisfied that such jurisdiction has been extended far beyond what the Legislature intended; and out of an immense number of cases referred to the Masters under this section, the nature of which would illustrate what I have just stated, I may mention the one of Lord Kilworth *v.* Mountcashell, recently before the Master of the Rolls, on appeal from the Master to whom the case was referred under the 15th section of the Act. In truth, points of the gravest and most momentous character are every day entertained and decided by the Masters under this jurisdiction, at an enormously increased expense to suitors. Each of the Masters sitting as Chancellor, with an appeal to the Master of the Rolls, and from him to the Court of Appeal in Chancery, and from thence to the House of Lords. The cases brought before the Rolls Court on appeal under this jurisdiction, are generally of the most embarrassing nature, owing to the mass of paper by which the points for adjudication are shrouded; and upon a most careful review of the working of this jurisdiction, I have come to the conclusion, that the sooner it is put an end to the better; indeed, I think that the precedent made in England should be followed in this country, and that the office of Master should be abolished, one Master being retained for the purposes of receiverships. It would appear to me to be a great advantage that the Court of Chancery should be *bound* to decide, in the first instance, every question arising on the pleadings, whenever it is possible so to do, without being at liberty to interpose a reference to another tribunal.

I think that the system of Clerks to the Equity Judges pursued in England, ought to be adopted, care being had that their duties should be confined to mere matters of detail, otherwise, they will, in the course of time, assume the name and jurisdiction of

* In addition to those who answered, the Circular was sent to—R. J. Berkeley, Q.C.; Thomas Lefroy, Q.C.; F. W. Walsh, LL.D., Q.C.; J. E. Walsh, Q.C.; Charles Andrews, Q.C.; Alexander Norman, Q.C.; F. W. Brady, Q.C.; R. F. Franks, Esq.; A. T. Henderson, Esq.; R. H. Owen, Esq.; C. Shaw, Esq.; A. H. Graydon, Esq.; E. C. Tuthill, Esq.; W. A. Exham, Esq.; G. A. C. May, Esq.; J. O'Hagan, Esq.; A. S. Jackson, Esq.; C. H. Tandy, Esq.; M. Harrison, Esq.; M. Morris, Esq.; J. J. Twigg, Esq.; W. O'C. Morris, Esq.; A. G. Richey, Esq.

masters. Power should be given to appeal immediately to the Judge from any ruling of the Clerk, whether interlocutory or otherwise; and the Judges in Equity in Ireland should have the same jurisdiction in Chamber as they have in England. The summary mode of proceeding given to suitors in certain cases under the Chancery Acts of 1852 in England, should be allowed in Ireland. I think the system of appearances adopted in Ireland is right.

I think the petitioner or plaintiff should be compelled to serve the respondent or defendant with a copy of the petition, and that the time for answering should only run from such service.

I would have no decree *pro confesso*, no replications, and no moving for a decree, as in England.

I think the petitioner or plaintiff should be at liberty to enforce the respondent's or defendant's answers by means of interrogatories.

I think that the Judges in Equity should be at liberty to substitute service in every case, without regard to the nature of the suit.

I think that there ought to be but one mode of setting down a cause for hearing, viz., that mode which I have already indicated.

Subject to any modifications which the foregoing remarks would render necessary, I think that the entire English system ought to be adopted, and the mode of procedure and practice made uniform in the two countries.

(Signed) EDWARD SULLIVAN.

January 8, 1863,
32, Fitzwilliam-place.

Edward Sullivan, Esq., Second Serjeant-at-Law.

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2. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. B. CLIFFORD LLOYD, ESQ., LL.D., Q.C.

B. Clifford Lloyd, Esq., LL.D., Q.C.

1. The result of my experience of the present system of proceeding by cause petition and affidavits in the Courts of the Lord Chancellor and Master of the Rolls in Ireland, under the Chancery Regulation Act, 1850, is, that the system, as at present constituted, is embarrassing to the practitioner, and not suitable to many of the cases to which it is applied. But I am of opinion that by a few alterations, the system of taking evidence by affidavits could, with great convenience, be applied to a large class of cases: I refer to such cases as depend principally upon the proof of deeds and documents, and in which there can be no fair controversy as to the principal facts of the case.

2. I am of opinion that the defect in the present system is owing almost entirely to the circumstance that no sufficient line of distinction is drawn between the statements of the case of each party, and the evidence adduced to support it; and sometimes both are permitted to proceed cotemporaneously, from whence arises the practice, now existing, of allowing each party to file affidavits alternately, without any limit except the discretion of the Judge before whom the application is made.

In order to remedy this, I would suggest that the petitioner should, in the first instance, be compelled to file a pleading containing a succinct statement of his case, such statement to be divided into paragraphs to be numbered; that the respondent should be allowed a certain time to file an answer containing a statement of his case or defence, in like manner to be divided into paragraphs to be numbered; that the petitioner should be allowed to amend once, as a matter of course, after answer filed, for until then it is in many cases difficult to foresee what case will be made by the respondent, or what statements should be introduced into the petition to meet it; that the respondent should be allowed to answer the amendments, if any, but that no further amendment should be allowed without the special leave of the Court, and upon a special case to be made; that after the time for pleading has terminated on both sides, the cause should be considered as at issue, and then, but not before, each party should be allowed to prove his case by affidavits.

I have known cases in which witnesses have declined to volunteer to make affidavits, but have said that if subpœned they will state the truth. In such cases permission should be given to examine such witnesses *vivâ voce* at the hearing.

But in my opinion this system is not suitable to that class of cases in which the main controversy must be upon the facts of the case, such as a suit to impeach a deed for fraud. In such cases it is to be expected that the affidavits on both sides would be framed to meet the case; and I believe it has been found that affidavits so prepared, are too frequently sworn to by the witnesses without sufficiently considering the statements they contain, whilst in the case of a dishonest witness they afford a shelter for concealment or the perversion of the truth.

To prevent this abuse, I would suggest that the petitioner should not be permitted to set down a cause to be heard upon affidavits, without previously serving a notice upon all the respondents, stating that it is his intention so to do, in order that the respondents may, if so advised, be permitted to apply to the Court. to compel the petitioner to file a replication, and to produce the witnesses to be examined *vivâ voce* at the hearing. I cannot conceive a better system for the investigation of truth in a Court of Justice than that which requires—1st. A succinct statement to be made in writing by each party of his case or defence, and then, when there is a controversy as to the facts, that the proofs should be established by the examination of witnesses *vivâ voce* in open Court.

3. The working of the jurisdiction which the Masters exercise in Ireland, under the 15th section of the Irish Chancery Act, is attended with one great advantage, which gives it a superiority, in my opinion, over the proceedings either in the Court of Chancery or of the Rolls Court. What I refer to is the circumstance, that the suit, in a great measure, is carried on from its commencement to its termination before the same Judge in whose Court it originates. Yet, even in the Masters' offices, the superiority of such a system is not allowed to have its full effect; for while the Masters are invested with full jurisdiction to adjudicate upon all the difficult questions and rights of the parties in the cause, they are denied the power of giving directions as to matters comparatively formal, such as leave to amend, to file a petition of revivor, or supplement, or to serve parties out of the jurisdiction; for such purposes it is necessary for the suitor to apply in the Rolls Court, which occasions unnecessary delay, embarrassment, and expense.

4. The system of taking evidence in the Masters' offices is, I think, satisfactory. When the case of each party, or the points of law on which he relies, are presented upon the petition, or the charge, or discharge, (which are considered as the pleadings,) there is a meeting before the Master, when arrangements are made as to the mode in which the evidence is to be taken. Such matters as are properly the subject of affidavits, are allowed to be proved in that form; in other matters oral examination is permitted. In one of the offices the practice is to direct the oral examination to take place before the Examiner. This, in my opinion, is not satisfactory; and I would suggest that each party should, as a matter of right, be entitled to require that the witnesses should be produced for examination in open Court. Any abuse of this privilege could easily be corrected by subjecting the party offending to the punishment of costs. I may observe, that from the nature of the investigations and inquiries the Masters are required to make, the practice of obliging the parties to attend before them, previous to giving directions as to the mode of taking the evidence, is attended with this advantage, that when the counsel of the opposite parties meet before the Master, it frequently happens that mutual concessions are made, and suggestions offered and received, which tend to diminish expense and delay.

5. The changes, in the present system in the Masters' offices where they exercise jurisdiction under the 15th

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section of the Irish Chancery Act, that I would suggest, are simply to give the Masters complete dominion over the whole cause from its commencement to its termination, subject only to the right of appeal; to enact that the appeal should be to the Court of Appeal, and, in fact, to convert the office of Master from that of a Referee to a Judge, with original jurisdiction.

6. There is not much difference in the practice of the different Masters in cases under the 15th section of the Irish Chancery Act. I have already referred to one relating to oral examination. There is another relating to affidavits. In one of the offices it is required that the affidavits, on both sides, should be filed upon the same day, so that neither party can know what is deposed to by the witnesses of the other, until all the affidavits are filed.

7. In my opinion the whole system which permits one Judge to make references to another, to report either upon the facts of the case or the rights of the parties, is objectionable. I have known cases in which the Masters, under a reference to them, have been obliged to make reports without any additional documents or evidence beyond what existed in the Court above. The expense and delay occasioned by such a system are too obvious to need explanation. The Judge in whose court the suit has commenced should be compelled to carry it through all its details to its termination.

8. I would make one suggestion with regard to sales under the Court of Chancery in Ireland, in the case of land. The sale takes place, in the great majority of cases, in the Landed Estates Court. But if it be intended still to deny to the Court of Chancery the power of conferring judicial titles, at all events, the Court of Chancery, when it does undertake the sale, should be invested with the title of all the parties in the cause, and the signature of the Judge should be made equivalent to that of all the parties whom he would thus represent. This would save a good deal of delay and expense, where there are parties whom it is difficult to reach, or who may happen to reside out of the jurisdiction.

9, 10, 11, and 12. I would suggest that the whole practice and procedure of the Courts in England and Ireland should be assimilated. It is very doubtful whether there is anything in the practice of the Court of Chancery in Ireland, that could with advantage be extended to England. Perhaps the practice in Ireland of relying for discovery more upon oral examination in open Court, and the practice in regard to hearing motions, requiring that the notice should state the documents and affidavits on which the party serving it intends to rely, and that a list should be made of all notices to be heard, according to priority of service, might be stated as exceptions. But if in this, or in any other respect, an improvement can be made in the English practice, let the united intelligence of the practitioners of both countries be brought to bear upon it, but let there be but one system for both. I am convinced that nothing short of this will ever be satisfactory. For not until then will Ireland be properly placed under the protection of the Laws of England, or the proceedings of its Courts rescued from the confusion and uncertainty that now exist, or protected, as to the future, from the experiments of rash legislation.

(Signed) B. C. LLOYD,
134, Stephen's-green, West.

November 12, 1862.

James Rogers, Esq., Q.C.

3. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. JAMES ROGERS, Esq., Q.C.

According to my experience, the present system of proceeding by cause petition and affidavits in the Courts of the Lord Chancellor and Master of the Rolls in Ireland, under the Irish Chancery Regulation Act of 1850, has not worked well; and I believe this to be the opinion of many intelligent and experienced members of the Bar. It differs so materially from the practice and procedure in England, which were introduced into that country about two years subsequent to the passing of the Irish Act, that one cannot avoid expressing astonishment at the wide difference which exists between them, and can only attribute the discrepancy to the fact, that the project so recently introduced into Ireland (as an experiment merely, I presume), and the practice founded upon it had been found to be a failure. I do not mean to say that the English system, as it at present exists in that country, is unobjectionable, or that it ought to be adopted in all its integrity here; but I do hope that the result of the present inquiry in each country, will be the introduction, as far as may be practicable, of one uniform system of practice and procedure applicable to both countries. If this be attained, we shall, in this country, have upon questions of procedure the benefit of the learning and experience of the English Chancery Judges for our guidance, and be less likely again to lapse into a course in respect thereto, which has so frequently brought upon us the censure and deprecatory observations of the highest Court in the kingdom.

I shall now (not, however, professing to answer seriatim the paper of queries forwarded to me by the desire of the Commissioners), proceed to make some general observations and suggestions, both as to the working of the present system of proceeding by cause petition and affidavits in the Courts of the Lord Chancellor and Master of the Rolls, under the Irish Chancery Regulation Act, 1850, and also in reference to the system pursued in the offices of the Masters under the jurisdiction conferred upon them by the 15th section of the Irish Act.

The present mode of proceeding should, I think, be wholly abolished, and in lieu of it a suit, when instituted by a private individual, should be by a certain and more precise form of pleading (call it bill or cause petition) than that now in use, and when instituted by or on behalf of the Crown should be by information.

The provisions contained in the 45th and 47th sections of the 15th and 16th Vic. c. 86, enabling creditors, legatees, &c., of a deceased person to obtain an order for the administration of the personal and real estate of the deceased, as particularly mentioned in those sections, might be advantageously introduced into this country; but with this exception, it would seem to me, that suits in equity, by private individuals, should be commenced by a pleading, somewhat in the form, and to be printed and served as prescribed by the English Act.

I would give a plaintiff, in every case, a right to file interrogatories for the examination of such of the defendants whose conscience he might desire to search, and from whom he might hope to obtain admissions, and for such purpose the special leave of the Court should not be required, the plaintiff, of course, to be at liberty to except to the answers for insufficiency; such interrogatories, however, should, I think, be grounded on allegations contained in the bill, which it would appear is not considered essential under the English system. Every defendant should be at liberty, if so advised, but not compellable, to answer the bill, and I would also enable a defendant to plead or demur to the bill. I entertain no doubt but that this power of demurring or pleading in the first instance would tend to save expense, as leading, as it would do in many instances, to the prompt dismissal of bills, when not showing sufficient equity to support them, or the defendant has a valid defence against the relief sought. But though I am of opinion that a bill or initiatory pleading should be technically framed and made as perfect as possible in the first instance, for the purpose of lucidly presenting the plaintiff's case to the opposite party upon whom it is served, yet I would give a plaintiff a general power of amending his bill up to the filing of a demurrer plea or answer, and the Court, I think, should have the fullest power to permit amendments of the bill whenever it saw fit, even after the time for amending without an order had elapsed. Under the present practice, a petitioner is embarrassed in amending his petition, in the most trivial particular, by reason of the necessity of verifying by affidavit the statements therein.

I would no longer require such an affidavit to be made. It has come to be considered as little more than a matter of form, is productive of slight benefit or ad-

vantage, while it is very embarrassing in the future prosecution of the suit. These observations relating to the affidavit to verify are not intended to apply to injunction cases.

I think that a defendant should have power to file interrogatories, as in England, for the examination of the plaintiff, and that no order of the Court should be required for the purpose, and that a defendant should be at liberty, in like manner as a plaintiff, to except to the answers, if insufficient; and with respect to all interrogatories, whether filed by plaintiffs or defendants, I think that the powers contained in the 15th and 16th Vic. c. 86, in relation thereto may be advantageously introduced into Ireland. The rules of 1843, from seventy-four to eighty inclusive, form a useful code on this subject. I think that either party should have the power to compel the other to produce documents, though through the instrumentality of the Court.

I disapprove of the Irish practice, which requires a petitioner or respondent, as the case may be, to deny the allegations of fact contained in his adversary's statement, under the penalty of the fact being taken as admitted.

I certainly prefer the English practice in this particular, by which it would appear that if no answer be filed, the defendant is considered as putting the plaintiff upon proof of his case; and this, in my opinion, imposes no undue hardship upon a plaintiff, who, before he institutes a suit in equity, ought to be prepared to support the case he makes, either independently by the production of documents or other evidence, or by the admission of the defendant obtained upon interrogatories. The hardship, if any, will be still less when the great facility of mutually admitting, by consents, both facts and documents—which existed prior to the passing of the Chancery Regulation Act, 1850—shall be revived, as I hope will be the case under any new system of practice that may be introduced.

With respect to bringing the case to a hearing, there is practically no universal mode in Ireland at present for closing the pleadings; neither party can, with certainty, know when there will be a cessation of filing affidavits. This is highly objectionable, not so, however, in England, where the modes of proceeding to bring a cause to a hearing are as set forth in Mr. Barrer's statement. With respect to the second of these modes, namely, the giving notice of a motion for a decree, I think it is objectionable, inasmuch as it may involve the proof of controverted facts by affidavit, the use of which should, in my opinion, be discontinued.

The system of proving the case of either the plaintiff or defendant by affidavit is, I think, highly objectionable. In nearly all cases where there is a dispute as to matters of fact, the affidavits are prepared by the professional advisers of the respective parties, who frame the witnesses' testimony so as merely to support their client's case, while the witness, if left to answer for himself, might probably disclose the whole truth of the transaction; and then, not only is the whole truth not disclosed, but often the facts are more or less distorted, and the witnesses led inadvertently to depose to matters, as facts, which eventually turn out to be unfounded. I think, therefore, that affidavits should be used only for the purpose of proving exhibits and uncontroverted facts. The parties should have the power of dispensing with formal proofs by consents, the specific sanction of the Court being obtained in all cases of persons under disability.

With respect to disputed matters of fact, it appears to me, that the best mode of eliciting truth is by an examination orally before the Judge who hears the case, or before an Examiner properly qualified to discharge such duties. The latter is an expensive and dilatory mode of proceeding and has not been generally approved of.

Either mode, however, is in my opinion preferable to taking evidence in disputed cases by affidavit.

The proceedings subsequent to a primary decree or interlocutory decretal order and down to the final order, require some observations.

In considering the proceedings under this head I will assume, as is commonly reported, that the office of Master is to be abolished, and that one or more Vice-Chancellors is or are to be appointed.

So far as relates to the jurisdiction exercised by the Masters under the 15th sec., of the Irish Chancery Regulation Act, they have in fact exercised, with few exceptions, all the powers and authority of the Chancellor and Master of the Rolls, and, I am bound to say, generally speaking, satisfactorily.

The course of proceeding in such cases has proved to the satisfaction, I may say, of all practitioners in the Offices the very great benefit resulting from the fact of the same Judge hearing the case in all its branches and details, from its inception to its close.

I have therefore no hesitation in stating, as my clear opinion, that the Judge who may have pronounced the primary decretal order, should himself prosecute the inquiries and take the accounts thereby directed.

It would appear that, according to the practice in England, where accounts or inquiries are directed by a decree, the prosecution of them takes place in the Chamber of the Judge to whose branch of the Court the case is attached, and that, not before the Judge himself, but before his Chief Clerk.

In the majority of cases, the taking of accounts is the most important part of the case, and of the most vital importance to the parties concerned. Any practitioner of any experience in the Masters' Offices must know that points of law of extreme nicety constantly arise in the taking of the most ordinary accounts. All such inquiries should be, I think, conducted and prosecuted, with as little delay as may be, in open Court and before the Judge himself.

Again, according to the English practice, the Chief Clerk is to make a report or certificate, which may be the subject of exceptions or objections to be argued before the Judge. I feel persuaded that if such a system be introduced into this country, as incidental to the appointment of Vice-Chancellors, we shall have the Masters' Offices revived under a more vicious form than under the old system, with all the tedious and cumbersome procedure, which, it is the object I would presume, of the present commission to get rid of, and the loss of the advantages I have pointed out, as resulting from having those minor but important details prosecuted before the Judge himself.

According to the view which I entertain upon this subject, no report or certificate would be necessary. The Judges may, if they think fit, have what is technically called Chamber business; but even that should, I think, be disposed of in open Court. This is the course adopted by the Judges of the Landed Estates Court in Ireland, and in the Masters Offices in proceedings under the 15th section. All the business is done in open Court, and in both cases the practice works well. I think that each Judge should have a competent Registrar, to sit in Court and take down minutes of the orders &c., and one or more clerks (if necessary), to vouch accounts, and discharge other merely ministerial duties arising in the progress of the cause.

I would also enable the Judge to obtain the assistance, when he should think it expedient, of professional accountants, engineers, and other scientific persons, the better to enable him to determine any matter at issue in any cause or proceeding. I cannot see any necessity for the employment of conveyancing counsel to assist and advise the Judge, as appears to be the practice in England. The Judge should be able himself to dispose of questions of title, as well as every other question which may arise before him, with the assistance invariably afforded by the counsel of the respective parties. I may here observe, that one of the Orders of the 3rd January, 1859, which provides that a fee shall be allowed for counsel in settling any draft final decretal order, works well. The rule might be usefully extended to other decretal orders, and, indeed, to all orders which the Judge may deem it desirable should be so settled. It is notorious that much inconvenience and delay arises in the Registrar's Office from the difficulty the Registrar frequently has in settling the minutes of an order in a complicated case.

It has been stated (at least, a rumour is current to the effect), that the Commissioners have already deter-

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mined to advise the appointment of only one Judge, in addition to the Chancellor and Master of the Rolls. From my knowledge of the amount of business in the Masters' Offices, I am convinced that one additional Judge will not be sufficient to discharge the business; two, at least, will, in my opinion, be required, unless, indeed, they have the power, which I trust will not be given them, of sending matters of account to be disposed of by a Chief Clerk or deputy.

There are one or two other matters of minor importance, in reference to which I beg to offer some suggestions :—

1stly. With respect to the dismissal of bills or cause petitions, as the case may be, for want of prosecution;—a bill should not, I think, be dismissed in any case, unless upon the application of a defendant for that purpose, to be made at such times and under such regulations as may be provided by a General Order.

2ndly. The 57th Order of May, 1857, directs, that the Masters, upon the first hearing, shall, by order, limit a time within which the final order is to be obtained; and it proceeds to declare that if the petition be not proceeded with in the time prescribed, that it be dismissed, with costs. It is impossible for a Judge, with any degree of certainty, to determine at the outset the period within which a matter pending before him can be finally wound up, and this has been proved repeatedly by experience. The consequence of the rule has been to necessitate frequent applications for extension of time, granted almost as of course; and in one case, within my own knowledge, the period for procuring a final order has been already extended eight different times, and it has not yet been obtained.

3rdly. The General Orders now in force in Ireland for the conduct of a cause or matter in the Court of Chancery are, I think, far too numerous. The multiplication of them, sometimes hastily and inconsiderately made, is, I think, a great evil. The Judge is thereby fettered and controlled in the exercise of his judicial functions, and I have found that justice is more speedily and effectually done in the Offices of those Masters who do not consider themselves bound by every General Order, than where the Master thinks it incumbent upon him to adhere rigidly to the letter of every order.

4thly. Interlocutory applications of various kinds become unavoidable from time to time in the progress of 15th section cases. Such applications are so numerous and various, that when the General Orders of the 24th September, 1860, were made, it was found, I presume, impossible to classify those in which, from their importance and complication, the attendance of counsel for either party should be allowed as against the adversary. And accordingly, at the foot of these orders it is provided, that in addition to the cases specified, the costs of the attendance of counsel should be allowed in all cases in which the Master, by entries in his book, should have previously directed such attendance. This, according to the practice in some of the Offices, involves the attendance of the Solicitor before the Master before the notice of motion can be served, and renders necessary a statement, generally very imperfect, of the purport of the contemplated motion, while in other Offices the motion is opened by the Solicitor, and then the Master determines whether the attendance of counsel is necessary, and if he thinks so, a day is fixed for moving the motion by counsel, a practice involving unnecessary delay and expense. The practice should be discontinued, and the Judge should have power in every case in which he thinks fit, to allow the costs for the attendance of counsel, his opinion to be formed at the time when the motion is moved, and not at any antecedent period, when the facts cannot be satisfactorily brought before him.

In all other particulars, the present practice as to motions in the Masters' Offices, which is similar to that of the Rolls Court, appears to me to work satisfactorily.

The English practice, giving the right to each party to examine his opponent's witnesses in motion cases, may, I think, be usefully introduced into the practice of this country; but as to the time or the order in which motions are to be made, these and other like matters of detail should, I think, be left to the discretion of the Judge, unfettered by any legislation or General Orders upon the subject.

(Signed) JAMES ROGERS.

Upper Mount-street,
7th March, 1863.

David Sherlock, Esq., Q.C.

4. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. DAVID SHERLOCK, Esq., Q.C.

1. In my opinion the present system of proceeding by cause petition and affidavit is an improvement on the former system, in effecting a saving of time and expense; but I think it defective in the mode of giving evidence, and from the want of an ascertained and fixed period in a suit when issue is joined between the parties.

2. The cause petition in Ireland differs very little in substance from the bill in England. I see no object in retaining the name of "Cause Petition," or the form now in use, when a bill may be made as clear and concise; and in styling the parties "petitioner" and "respondent," confusion sometimes arises in notices and affidavits by not observing the distinction between summary petitions and plenary suits. If the English system be not extended to this country, which, I should think desirable, the practice in both countries should be assimilated to the extent of introducing the English system of replication, or fixing a period when issue is joined in a suit. The present system in Ireland is so little understood, that cases are not unfrequently sent to counsel to direct proofs after the petition has been set down for hearing, though the 2nd General Order of 1852, and the 1st General Order of 1856 preclude the respondent, at least, from filing affidavits after the petition has been set down.

3. The jurisdiction established under the 15th section appears to me to have little more effect than to substitute one Judge for another. When this mode of procedure was first established, the object was to have a cheap and speedy settlement of the suit, without much regard to forms or previous practice; and the framers of the "Chancery Regulation Act" intimated a strong opinion in the 17th section of the Act, that the Masters might disregard all rules and course of practice, provided the proceedings were inexpensive and speedy. Experience, however, has shown that the speed thus attained was not altogether desirable, and the litigant parties are now afforded full opportunities of putting their case on record, and establishing it by proof. I doubt very much whether a suit under the 15th section is at present less expensive or more speedy than a plenary suit involving a similar amount in dispute; the same questions arise, similar evidence given, and, in heavy cases, the hearings last as long as in the Court of Chancery or the Rolls Court; and in such cases the judgment of the Master is generally reduced to writing. If any party is dissatisfied with the Master's judgment, he may involve his opponent in the expense of a double appeal, and ultimately take the case to the House of Lords.

4. I think the system of taking evidence by affidavit is defective, and not calculated to elicit the truth in cases involving disputed questions of fact, the proof of which depends on mere parol testimony. The affidavits are prepared with the view to contradict the allegations on the other side, but the accuracy of the details is frequently disregarded, statements are introduced into affidavits which are overlooked or not understood by the witnesses, who would not have made such statements on oath if examined *viva voce*, and particular statements in the hostile affidavits which could be contradicted, are sometimes unanswered through inadvertence, and these allegations are afterwards treated as admitted, whilst in cases where the witness deliberately misstates the facts or conceals the truth, he is protected

by the vague form of the affidavit from the consequences of perjury. I find that affidavits are not approved of by the highest authority in England. In the case of Farrall *v.* Davenport, 5 Law Times, n.s. p. 436, being a case to compel specific performance, the Lord Chancellor, in p. 438, says, "I regret exceedingly that some rule has not been established for the purpose of trying issues of fact of this nature by *viva voce* evidence originally without affidavits." I think that in every suit where contradictory evidence may be anticipated, the witnesses should be examined *viva voce;* affidavits may be retained to prove documents, pedigree, &c., or simple facts not likely to involve contradiction. In addition to other objections, I may state that the system of taking evidence by affidavit is sometimes used as a means of extortion. As a person cannot be compelled to make an affidavit, witnesses frequently require to be paid for their "trouble"; and I have known cases where essential witnesses have refused to make affidavits unless the drafts were previously approved of by their own solicitor. Parties who require the evidence must either submit to this extortion, or apply to the Court for liberty to examine the reluctant witness *viva voce;* he is compelled to give evidence by the service of a subpœna, but he is generally found to be hostile to the party who has thus enforced his attendance.

5. If the present system be retained, I think the Masters should have precisely the same jurisdiction in cases under the 15th section as the Courts above have in ordinary suits. The Masters have no power at present to permit the petition to be amended.

6. The Masters sometimes differ in their views of the Chancery Regulation Act, and the practice is consequently not uniform in the different offices. I am unable to specify in detail the several points of difference between the Masters, but I may mention, by way of illustration, that some of the Masters adopt and highly approve of the 51st Order of May, 1857, which directs the Masters, at the first hearing, to limit a time within which the final order shall be made, whilst others think this rule inconvenient, and do not adopt it in practice.

7 and 8. I think interlocutory applications in minor and lunacy matters should be brought before the Court by motion, without the necessity of a petition at every stage of the proceedings.

9. As I am not familiar with the practical working of the system in England, I am unable to answer this question.

10. I think the system in both countries should be assimilated, and that the practice and procedure of the Court of Chancery in England (save as regards taking evidence by affidavit) might be advantageously extended to Ireland.

(Signed), DAVID SHERLOCK,
15, Harcourt-street.

November 12, 1862.

5. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. ROBERT R. WARREN, Esq., Q.C.

1. Under the system which has obtained in the Equity Courts of Ireland, since the passing of the Chancery Regulation Act, 1850, many useless technicalities have been abolished, and the costs of suits as regards pleadings and some other items of expense, have been diminished. These improvements might have been effected, either by a limited application of the Irish statute, or (as in England) by reforms of the old practice. But, in fact, the new system has altogether superseded the old practice, an effect which I cannot think the Chancery Regulation Act was intended to produce (Glascock *v.* Ross, 1 Irish Ch. Rep., 55), and which, in my opinion, even in the Courts of the Lord Chancellor and the Master of the Rolls, has not been beneficial. The loose nature of the cause petition and respondent's affidavit (to which the name of pleadings has been denied), has promoted vagueness of statements on the part of professional gentlemen, and of testimony on the part of witnesses, has thrown an undue measure of responsibility on the discretion of Judges, and has tended to make results uncertain. I think speculative litigation has been encouraged by the present system, and has increased since 1850.

2. I entertain and desire respectfully to express the strongest opinion, that the change of procedure in the Irish Equity Courts which would be most beneficial to all parties interested, to the Judges, and to the bar, to solicitors and suitors, would be the simple substitution for it of the system of the English Equity Courts. If the English system were inferior to that of Ireland, I think compensation would be found in the advantages of uniformity in the administration of the same law in all the Courts of the United Kingdom, and in the aids which judges and lawyers would derive from reported decisions on the rules of a common system. But if, as I think, the English system on the whole, and in almost all its details, is superior to that of Ireland, the principles of public policy and justice to this country seem to call for the substitution which I have presumed to suggest.

The *judicial* position which the Landed Estates Court fills in Ireland, seems to me the only impediment to an immediate adoption in this country of the English system, and if the functions of the Landed Estates Court were limited to those of a Court of Title, and for the conversion of land into money, functions analogous to those of the Register under the recent English statute, and of the Conveyancing Counsel in the English Court of Chancery, an uniformity of practice, almost perfect, might be effected with great simplicity.

If, however, it shall not be thought right to extend the English system in its integrity to Ireland, there are some parts of the English system which might with advantage be restored or introduced into the practice of the Irish Equity Courts.

a. In certain classes of cases, such as suits to set aside or rectify deeds which almost always require precision and solemn consideration, and suits for specific performance in which so much inaccurate statement and reckless swearing prevail, bills ought not only to be permitted but encouraged.

b. Demurrers for want of equity and pleas of substance should be allowed. How much delay and expense would be saved in many cases, if the defendant would say, "I, A. B., admit the facts alleged to be true, but aver the plaintiff on his own showing is not entitled to relief;" or, "I, A. B., admit the facts alleged to be true, but aver that the plaintiff is not entitled to relief because," of some new material fact, and could set the case down to be heard. This is the view of Sir John Romilly, M.R., in conformity with that of Sir John Leach, and Lord Langdale, and other Judges, who have refused costs to successful defendants, because they permitted the cause to proceed, instead of cutting it short by plea or demurrer. I refer, *int. al.*, to 4 Beavan, 350, 357; and 14 Beavan, 492, 496.

c. Issue ought to be knit at *some* stage of the proceedings, so that the parties might be able to understand what matters should be proved, and when proofs should be directed. Evidence should be closed at a *certain* period—a reasonable interval should elapse after closing all proofs before the cause is set down—now cause petitions are frequently set down by the petitioner, and sometimes by the Court, before any evidence or proofs whatsoever have been prepared. This practical difficulty arises under the Chancery Regulation Act, and the rules of Court. All the facts alleged in the respondent's affidavit, by way of answer, will be taken as true if not denied by the petitioner; is counsel to direct voluminous and expensive proofs *à priori* upon the hypothesis that the petitioner will deny all material facts? if not, he is excluded by one of the rules from proving those facts after their denial in the petitioner's *replication*, for the rule provides that the respondent's *rejoinder* is to be limited to any *new* matter in the petitioner's replication.—2nd Order of June, 1856.

d. The provisions as to the time for answers do not appear to me satisfactory. A month is not sufficiently long in a serious case, and when there is an understanding between co-respondents, the petitioner may be, and sometimes is, most unreasonably delayed—*e. g.*—sup-

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pose three respondents, A., B., C.; A. answers in four weeks, and makes such a defence that the petitioner could not set down the cause to be heard for six weeks, but in five weeks B. answers, and raises a defence, which of itself would delay the petitioner for nine or ten weeks, during which time C. may defer his answer, and so on!

e. I much prefer the English practice on the subject of amendments: the necessity for an order to correct a misnomer or trivial error involves useless expense, and sometimes considerable delay.

f. The English orders of the 5th February, 1861, on the subject of evidence, appear to me to form an excellent system. One defect in the Irish system is the difficulty, expense, and delay in obtaining evidence from persons who decline to make affidavits, or furnish information. Compare the English orders and the Irish system as explained in Glascock *v.* Ross, 1 Irish Chan. Rep., 50.

g. The verification of the cause petition by affidavit, does not appear to me an improvement on the old system.

h. The rule, already noticed, by which the uncontradicted statements of the cause petition and answering affidavit are made conclusive, has not worked well, in my opinion, and according to my experience. Taking this rule in connexion with the fact, that in many cases proofs are not directed, and that the true construction of the rule is unsettled, I think it is not only calculated to act as a trap for the unwary and unskilful, but that it has occasionally led to a failure of justice.

3. In reply to the third question on the paper, I beg to state, that the result of my experience and my opinion are strongly unfavourable to the working of the jurisdiction which the Masters in Ordinary of the Court of Chancery in Ireland exercise under the 15th section of the Irish Chancery Regulation Act.

a. The only argument in favour of that jurisdiction, which has ever appeared to me of weight, was that the procedure was less expensive than that of the Superior Courts. I do not think that argument is well founded in point of fact. In some cases, no doubt, there is a considerable saving of expense, these being chiefly cases of a formal nature, where, if this jurisdiction was not applied, inquiries would be directed to the Masters in another form under the *existing* practice in Ireland; but, on the other hand, there are many cases in which I think costs are enormously increased by the application of this jurisdiction, such as suits in which the whole controversy might be decided at one hearing by the Court, without any reference to the Master; and it is my impression that even as regards the former class of cases, the English system would be found an inexpensive substitute.

b. In many cases, the delay of proceedings under the 15th section is considerable; a general cause petition filed on the first of July, might be heard the first week in November. A petition under the 15th section, filed on the same day, cannot be brought within the Master's jurisdiction until the first week in December, after which are to follow, not the immediate hearing for decision, but, first, the hearing to direct defences; second, the defence; third, the hearing to direct proofs; fourth, the making of the proofs; and, fifth, the hearing for primary adjudication upon the petitioner's rights, which corresponds, *mutatis mutandis*, with the hearing before the Court, which might have occurred months before.—Mr. Jellett's statement, p. 81, *et seq.*

c. The cases which fall within the jurisdiction of the Masters, under the 15th section, are of equal importance with those disposed of by the Lord Chancellor, as regards magnitude, legal difficulties, and amount of property involved in the litigation; and I confess, that in my opinion, the *office* of a Master, in which the public, the press, and the bar (with the exception of the counsel retained) do not attend, is not a suitable tribunal for such cases, and suitors ought not to be obliged, at the peril of costs, to submit such cases to Judges, who, though able and learned, and of high professional character when at the bar, occupy a position of inferior dignity.

d. Suitors are unable to secure the attendance in the Master's office of the counsel who hold the first position in the profession.

e. Suitors are exposed to the delay and expense of three successive appeals and a re-hearing.

f. I concur in Mr. Jellett's statement as to the want of uniformity of practice in the Master's offices. Mr. Jellett correctly states, p. 81, "Upon some of the most material steps in a cause instituted under this section (the 15th), a practice common to all the Masters can be hardly said to exist." There are diversities, as to an arrangement of business, modes of evidence, publication of evidence, conversion of rulings into formal orders, forms of orders, &c., &c.; this appears to me to be a serious evil.

g. One rule of practice which obtains in some of the offices, under the 15th section, is this:—At the first hearing, which generally is upon the petition only, the Master names a day for making the final order, and directs that in default the petition shall, without further order, stand dismissed with costs! I cannot understand how a Judge is able to guess at the difficulties and delays which may have to be encountered by a petitioner in any case, before the defence has been stated; in cases of account, where unknown claims of extreme complexity may arise, the rule is applied at the risk and costs of the petitioner, or of the owner of the property in suit. The application of the rule to administration suits, appears to me open to more grave objection. The effect of the Lord Chancellor's order of reference is to deprive the creditors of the deceased testator or intestate, of a right to proceed at Law, Stokes *v.* Cottsman, 1 Irish Chan. Rep., 44; yet, by the application of this rule, the petition may stand dismissed in a few months without a posting or any open for the restrained creditor to intervene, and then being at liberty to proceed, he may find the assets lost, the representative insolvent, or his debt barred by the statute of limitations! What a door for fraud and collusion is here opened? I believe, that in one of the Master's offices, this objectionable order is never made: an illustration of diversity of practice. I think it is quite right that petitioners should be active, but the stimulus should be applied by the defendants moving for a dismiss or for the carriage of the suit.

h. In consequence of an inadequate staff in the Masters' offices, the orders (which in the superior branches are prepared by the Registrars) are drawn up by the parties, and in one of the offices, interlocutory orders are generally prepared, *ex parte*, by the counsel, who obtains the rule. This practice appears to me objectionable, for obvious reasons. This case occurred:—The Master properly refused to sanction the attendance of executors named respondents in an administration suit, on the ground, that the only question was the ownership of a specific legacy; the point was decided, and the petitioners prepared the final order, inserting an admission of assets, and a direction that the executors should pay all the costs. The admission was imaginary, not contained in any discharge or ruling, or ever made; the case was, after argument, ordered to be re-heard; but the error could not have occurred, if the order had been prepared by an officer, whose duty would have been simply to arrange and express the adjudications and rulings of the Judge in decretal form.

The chief objections to the system of procedure under the 15th section of the Act, are, in my opinion, so inherent in that system, that particular changes of practice would be of little value, and the true remedy is to be found only in its abolition. I am persuaded that the general introduction of the English system into Ireland, in lieu of a proceeding under the Chancery Regulation Act, would be a boon to all parties in Ireland interested in the administration of equity. If, at any time hereafter, it should be deemed politic to draw into closer union the Judges and the bars of the United Kingdom, previously well understood uniformity in the administration of the law would facilitate the union; and on the other hand, if deemed impolitic to effect such an union, the intrinsic benefits of uniformity would render that union of less importance.

(Signed), ROBERT R. WARREN,
Upper Mount-street.

November 7, 1862.

6. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. HEDGES EYRE CHATTERTON, Esq., Q.C.

1. In my opinion the working of the present system of proceeding by cause petition has, in the case of general cause petitions, diminished the delay and expense of a suit in Chancery, but has led to looseness and uncertainty of practice. I think it was unfortunate that the evils in the former system were not reformed as in England instead of trying the experiment of a radical change. It appears to me a great mistake to suppose that in the cases which come before the Court as general cause petitions, pleadings can be dispensed with; for, in my opinion, accuracy of statement of the cases of the respective parties, raising the questions for decision and narrowing the matters in dispute, is of the greatest importance to a right discussion and proper adjudication of the cause. The proceeding by bill, it is true, has not been done away with; but the certainty that if resorted to, the step would be punished by the infliction of costs—and, besides, the existence of evils in that system unremedied—prevented any counsel from advising such a course. I shall, in reply to subsequent questions, state some of the objections to the details of the system.

2. I recommend an assimilation of the Irish practice as far as possible to the English, as I believe that the great advantages we should derive from the assistance of English decisions, and the regularity and accuracy of procedure and practice which would result from the change, would far more than compensate for anything we should lose.

I think we should have pleadings; and I see no reason for preferring the names of "cause petition" and "answering affidavit" to those of "bill" and "answer." I do not think there is any use in verifying a bill; and I think an answer (which, as to some extent giving discovery, requires some verification), should be verified, not by swearing it as an affidavit, but in the same qualified form as in England.

The present system of amendment of cause petitions is very embarrassing. In consequence of their being verified, and therefore partaking of the nature of an affidavit, it was considered improper to allow any alteration in them, even in the most minute particular, after they were filed. I have found it nearly impossible to amend by the only mode permitted, namely, a memorandum added at foot, leaving, as one must frequently do, wholly inconsistent allegations unaltered in the original petition. After answer, the plaintiff should have without an order a limited time to amend his bill once, making such alterations in the statements, &c., as may be necessary. After the expiration of this time he should not be permitted to amend without leave on special motion. The defendant should, of course, have leave to answer such amendments. The parties should then be strictly held to the cases made by them in bill and answer, and the evidence confined to proof of the matters in issue.

I do not think the Irish practice as to parties as good as the English; as I am of opinion that, except in proceedings on foot of incumbrances, or for administration of assets, all persons interested in the decision should be made parties to, and bound by, the decision. The system established by Lord St. Leonards, by the orders of 1843, seems to me very complete and satisfactory in this respect. The practice of serving all the persons against whom direct relief is not sought with a copy of the bill, but without requiring an answer, and allowing them to appear only at the peril of costs, and preventing the death, &c., of any such person from abating the proceedings, would, in my opinion, be an improvement. A copy of the bill should be served on every party sought to be bound, except when there are sets of trustees or others who represent but one interest, and then a copy served on one of them might suffice. I think it should be compulsory to file and serve printed copies of the bill: but I do not think it desirable to enforce the printing of any other portion of the proceedings. The printing of affidavits, or other evidence before publication, I consider highly objectionable.

I think no defendant should be allowed to take any part in the proceedings unless he enter an appearance, and this should be done within a limited time and not afterwards except by leave on special motion.

It should be open to defendants to plead and demur as distinguished from answering.

The plaintiff should be allowed to insert interrogatories in his bill without leave; and the defendant should be entitled to interrogate the plaintiff after answer, and within a limited time, without an order.

I think the Irish rule of practice, that everything stated in the bill which is not denied by the answer should be taken as admitted, is convenient, and works well. I think a very convenient practice might be borrowed from the affirmative and negative contests of the Civil Law Courts, and that each party should be bound to serve a notice within a limited time after his adversary's pleading is complete, that he admits paragraphs 1, 2, 3, &c., either altogether or excepting any portions of a paragraph; and that he denies paragraphs 6, 7, 8, &c., or portions of paragraphs, specifying them. This would narrow the matters in dispute, and when applied to a bill would considerably shorten the answer, which should be directed to matters not simply admitted or denied, and when applied to the answer would point at once to the matters really in controversy, and therefore to be supported by proof. The Court at the hearing could punish with costs any unnecessary denials leading to expense. This would be a good method of closing the pleadings, which should be done in some way.

3. I think the system of procedure under the 15th section has failed in all, or nearly all, the objects for which it was intended. It has neither simplified nor shortened proceedings, nor, as I believe, lessened expense. A greater number of really important questions of both law and fact come before the Masters for decision in these cases than before the superior Judges of the Court in general causes. From the combination of the two characters, of Master and what I may call Vice-Chancellor, in the same person, and the transaction of this business in what is still the Master's office, there is a tendency in the practitioners to treat these cases with less consideration than would be the case in a regular Court. The decisions of the Masters are not reported, their Courts or offices are not attended by a full bar, and cases are sometimes not so carefully argued as they would be if more publicity attended the proceedings.

4. I think the ordinary mode of taking evidence under the present system, both in Court and in the Masters' offices, is one of the worst that can be for eliciting truth. The respondent can read his own answering affidavit as evidence, which seems to me very objectionable. With this affidavit, which is made to serve for a pleading also, he files the affidavits of his witnesses to support his case. The petitioner then having had full opportunity to see all his opponent's evidence, comes forward with the affidavits of himself and his witnesses carefully prepared to displace all this; and after this the respondent has the opportunity, if any new matter is stated by the petitioner or his witnesses (which is almost always the case), to file a new set of affidavits by himself, and the same on any other witnesses, and, as it frequently proves, to attempt to outswear what his adversary has sworn. It often happens that this affords an excuse for the petitioner to get leave to file further affidavits to meet the last set of affidavits of the respondent, and these again the respondent will obtain an opportunity of replying to. This affords a direct inducement to perjury, and in my own experience has often led to it; and the result has been, that the Court has found it impossible to arrive at any safe conclusion as to the truth of the case, and has been obliged either to order an examination *viva voce* before itself, or to send the case to a jury. The system of cross-examining witnesses who have made affidavits before the Examiner instead of before the Judge who is to decide on the evidence, is always unsatisfactory and generally useless. The giving evidence on any disputed matter of fact by affidavit is in itself objectionable, and the result of my experience of it has been that very many persons who would not willingly swear to a falsehood are induced from carelessness, or otherwise, to make affidavits containing such a perversion or suppression of the truth as to amount to actual falsehood. There are, of course, very many cases where affidavits

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will be quite sufficient, and the delay and expense of *viva voce* examinations could be avoided. I strongly recommend, that as soon as the pleadings are complete and the issues of fact thus evolved, a time be fixed within which all the evidence in chief at each side should be given; that during that period no access be given to any affidavits filed as evidence, that whenever the evidence is given by affidavit the cross-examination, if desired, shall take place *viva voce* at the hearing; that all affidavits be made in the first person; and that before the time limited for closing the evidence either party may apply to the Court that any particular issues, whether the onus of proof lie on himself or his adversary, be proved *viva voce* at the hearing, and that as to such issues no evidence by way of affidavit be permitted. It may be right to give the Judge at the hearing, when the evidence has been by affidavit, power to direct a *viva voce* examination before himself; but this should never be allowed except under very peculiar circumstances. The temptation to perjury becomes still stronger when the pinch of the case becomes apparent at the hearing. I think the present system of taking evidence in England is a very good one. It has occurred to me that it would be a check upon rash swearing if all affidavits as evidence were made by way of question and answer; and if the questions were settled by counsel, and annexed to the affidavits, it would, at a slight expense, increase that check considerably. When a witness who has made an affidavit is produced for cross-examination the cross-examining party should begin, and a new examination in chief should not be permitted; but, of course, a re-examination, according to the ordinary rules on this subject, should be allowed.

5. I do not suggest any changes in this system, as I recommend its total abolition. Instead of it the system of making administration decrees on summons in simple cases would, in my opinion, be a useful substitute. This, however, should be confined to cases where there is no important preliminary question to be decided. I have known many cases where the sole necessity for coming to the Court was to have a question of right decided—as, for instance, on the construction of a will—and in which, without any decision on the sole point in dispute, the cause has been sent at once generally into the Master's office, under the 15th section; and great expense has been incurred in taking heavy administration accounts, which were not required by the parties. It would be a great saving of time and expense if every question of right existing between the parties were decided at the earliest opportunity.

6. There are many minute points of difference which I cannot particularly mention. This must be so, as one Master has no opportunity from reported cases of knowing what is done by the other Masters.

7. This is so general that I can give it no satisfactory answer.

8. In my opinion the Masters should be abolished with the exception of one, who should take charge of the receiver business and other matters of like nature, but to whom no references on any other subject should be made. Care should be taken that the officers attached to the Courts of the Equity Judges should not become in effect Masters. Their business should be purely ministerial, and no disputed questions of law or fact should be decided by them. The Judge should himself, in chamber, work out his own decrees, except in mere matters of detail. In order to do this properly there should be, in my opinion, two Vice-Chancellors appointed; and they, with the assistance of a moderate staff of officers, could perform the whole business effectually at a less expense than that of the present system.

The Court of Chancery may well be intrusted with the carrying out of sales under its own decrees, and giving a parliamentary title. It seems to me unnecessary to send such matters to a separate tribunal. If it were desirable to diminish the expense of our Courts, a saving may be made in the Landed Estates Court, where there certainly is not now, nor is there likely to be, sufficient business to occupy three Judges and their respective officers.

The system of partitions in this Court requires alteration. The present practice of commissions of partition and perambulation is attended with great expense and delay. The Court should appoint independent professional surveyors and valuators to divide the property, and should act on their report, subject to objections by any party dissatisfied, as is done in the Landed Estates Court. The Ordnance Survey and General Valuation might well be availed of for this purpose.

Some check should be put upon the very great expense now attending the employment of accountants. The sums paid them in many cases that have come under my own observation have been so large as to be quite oppressive to the suitors.

The constitution of the Appeal Court might, in my opinion, be altered with advantage. I think the principle now adopted in the Exchequer Chamber, that none of the Judges whose judgment is appealed from should be a member of the appellate tribunal, is of great value. It would give more confidence to the suitor that his appeal will be heard without any preconceived opinion against it; it would free counsel from the unpleasantness of quarrelling with the decision of a member of the Court; and would, I should suppose, relieve the members of the Court of Appeal from some embarrassment, and prevent the presence of the Judge appealed from from unavoidably giving weight to the decision under review. This might be done by relieving the Chancellor from his original jurisdiction and continuing him as one of the Judges of Appeal. If the expense of two Judges of Appeal be objected to, the place of Lord Justice of Appeal might be discontinued, and the Court constituted of the Lord Chancellor and one or two of the other Equity Judges, exclusive of the Judge appealed from; or if the idea of its being lowering to the dignity of the Lord Chancellor to have an appeal from his decision to the other Equity Judges could be got rid of, the Appeal Court might be constituted of all the Equity Judges other than the Judge appealed from, either with or without a Lord Justice of Appeal, and without taking away the original jurisdiction of the Lord Chancellor. I do not think the system of calling in the aid of a Common Law Judge on questions of equity is satisfactory.

I am unable to give any satisfactory answers to the remaining questions.

(Signed), HEDGES EYRE CHATTERTON.

November 29th, 1862.

Edmond B. Lawless, Esq., Q.C.

ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. EDMOND B. LAWLESS, ESQ., Q.C.

1. In my opinion the procedure introduced by the Irish Chancery Regulation Act has not been so satisfactory in the working of it in the Courts of Chancery and the Rolls as to make it expedient to have it retained in its present form. It has several advantages, for instance, the absence of formal averments and matters of form generally in the statement of the plaintiff's (petitioner's) case; the dispensing with formal parties, and the adoption of one form of pleading on behalf of the defendant (respondent); the answering affidavit instead of the answer, plea, and demurrer, in use under the old system of equity pleading. It appears to me, however, that it is accompanied with the disadvantage that the pleadings and the evidence, particularly on the part of the defendant, are not kept sufficiently distinct, the one from the other; and that a consequence of this is that neither the law nor the facts of a client's case are presented to the Court so clearly as they should be. The defendant is obliged, if he intends to resist

the plaintiff's claim to relief, to file his affidavit by way of answer in a month, a sufficiently short time in a suit of any difficulty or complexity; and is obliged besides, if he mean to prove his case by affidavits, to have them prepared and filed within the same time. In cases of any magnitude it is very difficult to do this satisfactorily. The solicitor is not allowed a fee for having settled by counsel any of the affidavits of witnesses, and a not unfrequent result is that the affidavits of witnesses instead of being positive statements founded upon the witnesses' actual knowledge about the matter to be proved, are long, rambling, and discursive statements grounded upon hearsay and information, which are not legal evidence, but which generally provoke recriminatory statements in affidavits in reply by the plaintiff, or by witnesses on his behalf, which may have nothing to say to the merits of the case, but which it may be unsafe to leave unanswered. These statements will be answered by the defendant or his witnesses, and thus a great deal of statement and counter-statement will be made, which cannot be legally used in evidence, but which tends to delay and embarrass the proper hearing and determination of the cause. The result often is, that a number of collateral issues arise, and it becomes difficult to ascertain what the real issues in the case are, and what are the proofs directly bearing upon them.

I think that a great deal of all this will be avoided by having the pleadings on each side kept distinct from the evidence. I do not think the defendant should be required to bring forward his evidence at the same time that he files his pleading. I think that both parties should be required to complete their proofs (save so far as they are to consist of *viva voce* evidence at the hearing), within a certain limited time after the last pleading filed. I think the result of such a system would be that the evidence would be more accurately directed to the matters put in issue by the pleadings, and the multiplication of recriminatory affidavits would be avoided.

2. If the system of procedure by cause petition and affidavit under the "Irish Chancery Regulation Act" is to be preserved, the following alterations at least are, in my opinion, required:—The defendant (respondent) should file *his* pleading separately from and before filing witnesses' affidavits by way of evidence. Issue should be joined in the cause before any evidence (save so far as the defendant's affidavit by way of answer should be treated as evidence) could be given on either side. Both parties should be limited to the same time, within which their evidence should be completed, subject to a power of extension by the Court, to be exercised only in favour of a party who could sufficiently account for the delay, and, I am much disposed to add, who had not seen his adversary's witnesses' evidence.

The parties respectively should, as I think, be allowed, without obtaining the leave of the Court, to administer interrogatories to be annexed to, or in connexion with, their petition or answer to their opponent. I would allow this to be done within some reasonable limit of time after the opponent's time for completing his evidence had closed. I think each party should be allowed to make his proofs by depositions of witnesses, either verbal or in answer to interrogatories in writing before the Examiner of the Court of Chancery, or by affidavit, or by *viva voce* evidence at the hearing of the cause, as he or his advisers should think proper, without the necessity of any previous application to the Court. It is almost impossible for a Court, on such an application, to do otherwise than as the applicant's counsel says is essential for his client's interests. I cannot see the propriety of requiring such an application to the Court to be made, and I would leave it to the party and his advisers to make their proofs in that way which should seem to them most advisable.

I think a plaintiff should be allowed to amend his petition at least once before the defendant's answer is filed, without being obliged to apply to the Court for leave to do so.

3. In my opinion the working of the jurisdiction conferred upon the Masters in Ireland by the 15th and following sections of the "Chancery Regulation Act," has been beneficial to the suitors. As compared with the former system the procedure under the "Chancery Regulation Act" is shorter, more simple, comprises fewer steps, and is less expensive. The principle of the system, that the entire suit, from beginning to end, is to be worked out by the one Judge, assisted by his officers, subject to appeal to the appellate tribunal, is, in my opinion, good, and I would apply it more extensively than it has been applied by the "Irish Chancery Regulation Act."

4. Evidence is taken in the Master's offices in the same modes in which it is taken in the Court of Chancery. In the Master's offices *viva voce* evidence at the hearing is more frequently resorted to than in the Court of Chancery. As to the modes in which evidence ought to be taken my opinion is that every mode, by affidavit, deposition, or *viva voce* examination, in which it can, under the circumstances of each case, be best taken, ought to be open to the suitor to avail himself of, subject always to the adversary's right to cross-examine.

In the Master's offices the pleadings—that is, the charges and discharges—are distinct from the *evidence*, which must be completed by each party within a certain limited time after the discharge has been filed. This time is fixed at the first meeting upon the charge and discharge, before the Master, when, according to the practice under the 124th General Order of March, 1843, the parties respectively state generally the matters in issue upon their charge and discharge, and how they propose to prove them. It generally happens that each party will be prepared to admit some of the matters that are disputed on his pleading; and these admissions being taken down, on the Master's ruling, the necessity for making proof is so far dispensed with.

The Master generally adopts, as to the matters still in dispute, that mode of proof by affidavit or *viva voce* evidence, as the case may be, which each party states is best suited to the sustainment of his case. I think that the effect of this practice is to narrow the proofs, and to cause the evidence to be confined more closely to the points really at issue between the parties.

5. I think the Masters should have power to permit (in 15th section cases) the amendment of petitions and the filing of supplemental petitions, and petitions of revivor. By the present practice the petitioner is obliged to go to the Rolls Court for leave to amend or to file supplemental petitions. I think that the Master who is to decide the cause should have power to permit the petition to be amended.

I think the Masters should have power to direct service of notice of cause petitions out of the jurisdiction (Ireland). I would give them (the Masters) the entire, and not merely the partial, control over and management of suits under the 15th section of the Chancery Regulation Act.

The proceeding by a "summons" instead of a notice of motion, or notice of hearing, is unnecessarily expensive, but it is not peculiar to suits under the Chancery Regulation Act, and I believe it is not in the power of the Masters to dispense with it.

I do not think that the 51st General Order of May, 1857, which requires the Master, upon the first hearing of a cause petition, to fix the time within which the final order shall be made up, has proved of any practical advantage, but rather the contrary. In my opinion, the effect of it has been, not to expedite the progress of the suit, but to cause expense. I think that it should be rescinded, and that the Masters should have power to order that a cause petition be dismissed with (or without, as would appear proper) costs, for want of prosecution upon the application of the respondent, on being satisfied that some fixed time, say two months, had been allowed to elapse without any substantial proceeding in the cause, and without a reasonable excuse for the delay.

I think that the appeal from the Masters should be to the Court of Appeal direct, and not in the first in-

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stance to the Rolls. I think, also, that the Masters should have power to rehear causes, subject to a limit of the time within which the re-hearing should be had

6. The practice is not absolutely uniform, but I think it will be found that there are very few matters in which any essential differences exist. In one office the 51st General Order of May, 1857, to which I have referred above, is not, I believe, acted upon. In one office the positive and direct statements in a charge or discharge are received as *evidence;* in the other offices they are treated only as the averments in pleadings. There are some slight differences in the modes in which the vouching of accounts is accomplished in the different offices, but the evidences required and the results arrived at are substantially the same.

With respect to the general procedure in Chancery in Ireland, and the relative advantages and disadvantages of it and of the English system, it will be seen from my observations above, that I prefer the English system. I think, however, that "demurrers" and "pleas" may be dispensed with; and I prefer our principle of taking the petitioner's statement as proved if there be no counter-pleading of the respondent, to what is, as I understand from Mr. Barber's statement, the rule in England, viz., that the plaintiff must prove his case although the defendant has not filed any answer or affidavit.

I think that the special jurisdiction and powers conferred in matters of lunacy by several statutes in England should be conferred upon the Lord Chancellor in Ireland.

I think that the same system of procedure and pleading in equity should be adopted in Ireland and England; and the present English system is, in my judgment, preferable upon the whole to the present Irish system.

(Signed), EDMOND B. LAWLESS.

18th November, 1862.

Henry M. Pilkington, Esq., Q.C.

8. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. HENRY M. PILKINGTON, Esq., Q.C.

1. The present system of proceeding by cause petition and affidavits, under the Irish Chancery Regulation Act, works, in my opinion, well. It is so much less dilatory and expensive than the system which it has superseded, that very many suitors now seek the aid of the Court of Chancery, who could not have done so under the old system, and whose wrongs were practically without remedy.

The system is, however, defective in some respects and capable of improvement. It is defective, in my opinion, in the following points:—

I. The petition and answering affidavits are not considered to be *pleadings;* and the Courts do not therefore, generally, require the rules of equity pleading to be strictly adhered to.

For example: It not unfrequently happens that the respondent in his answering affidavit meets the petitioner's case by a statement, the effect of which the petitioner desires to remove by an additional fact, or by an explanation. This should of course be done (according to the rules of pleading applicable to a bill and answer), by an amendment of the petition. But the 2nd of the General Orders of 1856, giving the respondent fourteen days to answer any "*new matter*" contained in the petitioner's affidavits in reply, appears to sanction, and has certainly encouraged, the practice, of the petitioner stating such additional fact or explanation, not by amending the petition, but in an affidavit in reply. The petitioner should not be at liberty to bring forward "*new matter*," save by an amendment of the petition; thus, all the issues would be knit on the petition and answering affidavit.

II. There is no time at which issue may be said to be joined. Independently of the difficulty which may arise in suits to perpetuate testimony from this cause, it is the source of much practical inconvenience. When the issues of fact are knit, the parties should be respectively advised as to the necessary proofs. But as there is no joinder of issue, and the last affidavit may put in issue an additional fact, the great majority of causes are brought to a hearing without any case to advise proofs, and the evidence is therefore frequently defective.

III. Each party has not, under the present system in Ireland, the *right* to cross-examine, *at the hearing of the cause*, the opponent and his witnesses who have made affidavits. Each party may, no doubt, cross-examine the opponent and his witnesses before the Examiner of the Court, under the 13th General Order of May, 1857, in the presence of the counsel and solicitors on both sides; but that course is not often resorted to, when it can be avoided, because the expense is considerable, and the result extremely unsatisfactory. In any case in which a cross-examination would be useful, the demeanour and manner of the witness are almost as important as his words.

There is a class of cases, in which I am of opinion, that evidence by affidavit, even with the power of cross-examination at the hearing, will always be found unsatisfactory. It would be easy to point out instances of such cases (*e.g.*, a suit for the specific performance of an agreement for a lease, where part performance is relied on by the tenant, to take the case out of the operation of the statute of frauds); but it would be impossible to give an exact definition of them, or to separate, by a General Order of the Court, those cases which may not, from those which may, be safely decided upon affidavits. For that reason, perhaps, it should be left to the discretion of the Judge (upon an application as provided by the 12th section of the Irish Chancery Regulation Act, and the 11th General Order of May, 1857), whether a *viva voce* examination of the witnesses at the hearing may not be essential to the decision of any particular case.

2. My answer to the preceding question indicates the changes in the present system which I would suggest, viz.:—

I. That the petition and answering affidavit should be the *pleadings* on which every issue of law and fact should be raised; and that the rules of pleading should be required to be strictly observed.

II. That on the answering affidavit being filed (providing of course for the case of an amendment of the petition and further answering affidavit), the petitioner should either file a replication, thus closing the pleadings, or set down the cause to be heard on the petition and answering affidavit, in which case the answering affidavit should be taken as true.

III. That each party should be entitled as a matter of right, and without any order of the Judge, to cross-examine the opponent and his witnesses at the hearing of the cause, giving due notice of his intention to do so. (I find that in England each party has this right. —See Mr. Barber's Statement, page 62.)

3. In my opinion the working of the jurisdiction which the Masters exercise in Ireland, under the 15th section of the Irish Chancery Regulation Act is satisfactory when compared with the jurisdiction in general cause petitions, exercised by the Lord Chancellor and Master of the Rolls. But I am of opinion that the system here, too, is defective, and that the practice requires amendment.

4. I have in my replies to questions 1 and 2 answered this question in part. I think evidence by affidavit unsatisfactory in all cases, unless accompanied with the right to cross-examine at the hearing of the cause. My experience of cross-examination before the Examiner of the Court, leads me to the conclusion, that, although it is had before the counsel and solicitors for both parties, it is generally valueless as a test of truth, and much more expensive to the suitors than an examination at the hearing of the cause. Two of

the Masters entertaining, as I believe, the opinion which I have expressed on this subject, are in the habit of permitting *vivâ voce* examinations at the hearing, with, I think, the best results. Another Master is unwilling to permit even a cross-examination at the hearing; and now usually sends the cases in which *vivâ voce* examinations or cross-examinations are required, to the Examiner of the Court.

I am of opinion that the method of proceeding in taking evidence, suggested in my reply to question 2, should be adopted in cases in the Court of Chancery, Rolls Court, and the Masters' offices.

5. The only changes I would suggest in the present system pursued in the Masters' offices, other than those already mentioned in my answer to question 2, which are applicable to suits pending before the Masters, as well as to those pending in the Court of Chancery and Rolls Court, are—

I. That the Master should be the Judge in causes attached to his Court in all matters; that he should have power to make orders to amend the petition; to serve parties out of the jurisdiction; and, in short, that he should have entire control over his own causes.

II. That where accounts are to be taken, either of incumbrances affecting land, or of debts and legacies, instead of the cumbrous and dilatory proceeding by charge and discharge, a practice should be adopted similar to that now followed in the Landed Estates Court, where, in my opinion, it has worked admirably; viz.:—That the party having the carriage of the proceedings should prepare a schedule of the demands according to the best of his information; that notice should be given to all parties to the cause, and to all persons who are believed to have demands, and by advertisement to the public, of the lodging of the schedule for inspection; thus affording an opportunity to the persons whose demands are not entered on the schedule, or those who may consider their interests affected, to file claims; that the Examiner of the Judge or Master should investigate the claims so made, and place on the schedule such as he may find to be, *primâ facie*, valid; that a day should be fixed for the final settlement of the schedule before the Judge or Master; that all persons whose claims shall not have been entered on the schedule, or who may conceive themselves injuriously affected by it, may then bring their claims before the Judge or Master, on objections in writing verified by affidavit, of which all parties should have due notice, and which they should have an opportunity of answering; that the ruling of the Judge or Master, on each demand, should be entered by him on the schedule; and the cause having been then set down for hearing in Court, the final decree should be drawn up, and attached to the schedule, and the whole preserved as a record of the Court.

6. There is some want of uniformity of practice in the offices of the different Masters in cases under the 15th section of the Irish Chancery Regulation Act; but not, save in one instance, perhaps, of any great moment. The instance I refer to is this:—In the offices of two of the Masters, on a discharge to the petition being filed, and a summons issued, the Master names a day, on or before which the affidavits, by way of evidence, *on both sides*, are to be filed; he also names a day on which publication is to pass. The affidavits on both sides, therefore, are filed on the last day; and on the day named for passing publication, the parties see the affidavits of the opponent's witnesses for the first time.

There is, therefore, something analogous to the old passing of publication. In the Court of Chancery, and, I believe, in the offices of the other Masters, the party on whom the onus of proof lies, files his affidavits, and his opponent within a limited time files affidavits in reply. The latter course is that directed by the General Orders which apply to the *Court of Chancery*, and is, perhaps, essential to the system of evidence by affidavit.

But in adopting the former course, the Masters to whom I have referred have not departed from the practice prescribed by any rule regulating the proceedings in the Masters' offices. In fact, there is no general order of the Court, or of the Masters, regulating the reception of evidence by affidavit in the Masters' offices *under the Chancery Regulation Act of* 1850; the rules in force as to evidence by affidavit in the Masters' offices, are those of 1843, which were intended for a system entirely different.

I have already referred to a want of uniformity of practice in the Masters' offices, as to the *vivâ voce* examination of witnesses, in my answer to question 4.

7. In my opinion, the working of the other parts of the practice and procedure of the Court of Chancery in Ireland, under the Irish Chancery Regulation Act, is satisfactory, save in the following points:—

I. Much expense might be saved if decretal orders making references to the Masters in matters for inquiry, or account, and interlocutory orders of reference, were discontinued; and the accounts taken, and inquiries made by the Judge, to whose Court the cause may be attached.

II. The present mode of employing accountants, under the 13th section of the Irish Chancery Regulation Act, is, in my opinion, objectionable.

In every case in which I have been counsel that an accountant has been employed, the books containing the accounts have been handed over to the accountant to investigate the accounts generally, and report the results to the Master. I think it would be much less expensive and more conducive to the ends of justice, if the accounts were first investigated by the Judge or Master, so far as to ascertain the particular points, as to which the aid of an accountant may be required; and to reduce those points to writing, in the form of questions to the accountant, whose replies should be given *upon oath*. At present the accountant is in effect an unsworn witness.

III. The power of the Court to authorize service on a respondent out of the jurisdiction, and to substitute service under the 2 Wm. IV. c. 33, and 4 & 5 Wm. IV. c. 82, is very limited, applying only to suits concerning land, charges on land, government funds, and stock of public companies, &c. By an order made by the Court in England in May, 1845, such services may be permitted in any suit whatever. A similar extension of the privilege would be desirable in Ireland.

As to substitution of service, I think the rule laid down in Hobhouse *v.* Courtenay (12 Sim. 140), and followed in this country, viz., that the agent on whom the substituted service may be made, must be the agent of the respondent, *with respect to the property, the subject matter of the suit*, is too narrow; that Lord Cranworth in his judgment in Hope *v.* Hope (4 De G. M'N. and G., 328), suggests the rule which ought to be adopted in any legislation or general order on the subject, viz.:—"The object of all services is, of course, to give notice to the party on whom the service is made, so that he may be made aware of, and be able to resist, that which is sought against him; and when that has been substantially done, so that the Court may feel perfectly confident that the service has reached him, everything has been done that is required."

8. I would suggest:—

I. That the Judge to whose Court any cause is attached, should proceed in chamber as in England (see Mr. Barber's statement, page 64), to make the inquiries, and take the accounts to which he shall have, by his decree, declared the parties entitled; and that the Judge should himself allocate the funds, and do all matters now usually done by the Masters under interlocutory orders of reference.

II. That the Judge, employing an accountant, under the 13th section of the Irish Chancery Regulation Act, should, in the presence of the parties, settle the questions to be submitted in writing to the accountant, whose replies thereto, should be upon oath.

III. That the Judge, to whose Court a cause is attached, should have power to authorize service of the notice of the petition, or of a suggestion to revive proceedings, on a respondent out of the jurisdiction, whatever the nature of the suit may be; and that the Judge should have power also to substitute service on a respondent out of the jurisdiction, or whose place of abode cannot be found, or who cannot with reasonable diligence be personally served, in any case, in which

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the Court may be reasonably satisfied that the substituted service will be communicated to the respondent.

9. I am not sufficiently acquainted with the working of the present system of procedure in the Court of Chancery in England, to justify me in making any suggestion of amendment.

But I wish to state my opinion, that it would be a great advantage to the bar, the judges, and the public in Ireland, that the English and Irish systems of procedure should be, in all respects, alike.

The larger amount of business in the English Courts, and the greater number of reports, would insure a settled practice, much sooner than we could expect, without such advantages. The barristers, too, who practice, and the Judges who preside, in the ultimate Court of Appeal, would not then have to deal with a strange and unaccustomed system of procedure. I think it a cause for deep regret, that the course of procedure in the Courts of Equity, as well as the legislation, for England and Ireland, have been latterly becoming more and more separate.

In order to secure uniformity of practice, I would suggest that there should be one code of rules to regulate the proceedings in the Courts of Chancery in England and Ireland; and that the Lord Chancellor of Ireland, and the Master of the Rolls in Ireland, should be associated with the Lord Chancellor of England, the Master of the Rolls, and the Vice-Chancellors in England, in framing that code, and in making any subsequent alterations of, or additions to it.

10. In the answers to previous questions, I have suggested some alterations, which are adopted from the English Chancery Acts, and the practice of the Court in England. I have none others to suggest.

11. No. But in order to make the foregoing suggestions clearer, I shall here state, in a more connected form than I could well do in reply to the questions put to me, the result of the suggestions made, and give a brief outline of the procedure in a cause as proposed, taking the simplest case for illustration, that of a single respondent.

The suit would be commenced, as at present, by the filing of the petition, on which the name of the Judge, to whose Court the cause would be attached, should be stamped by the officer who receives it, following a certain rotation.

The notice of filing the petition, accompanied by a copy of the prayer, should be served on the respondent. If he be resident out of the jurisdiction, the leave of the Judge should be first obtained. If his residence is unknown, or if he avoid service, or if for any sufficient reason he cannot be served, an order should be obtained from the Judge, ordering such substitution of service, accompanied by such public notices as the Court might deem sufficient to insure that the notice would reach the respondent.—(See Hope *v.* Hope, 4 De G. M'N. and G., 328.)

The respondent should file his answering affidavit, as at present, say within one month, or a longer period if out of the jurisdiction; each fact alleged in the petition, and not denied, should be taken as true.

The petitioner should have power to amend the petition once, without an order (not by interlineation, but by endorsement, or by a statement to be annexed to the petition), to enable him to have all the issues raised on the petition and answering affidavit, to which the rules of pleading should be strictly applied.

The petitioner, after the time for the respondent to answer an amendment, if any, has elapsed, say one fortnight, should either set down the cause on the petition, if there be no answering affidavit (in which case the respondent might appear at the hearing, and show that the petitioner has made no case for the interference of the Court); or on petition and answering affidavit (in which case the answering affidavit would be taken as true); or file a replication, stating that he will hear the cause on the pleadings (in which case he might read from the answering affidavit, such admissions as he might think fit, as well as such statements in the petition as are not denied); or on pleadings and proofs, in which case, the petitioner should, within a limited time, file his affidavits by way of evidence; and the respondent should have a limited time, as at present, to answer them by affidavits, and to sustain his own case, with liberty to the petitioner to file affidavits in reply as at present; or if the issues be such as to require oral evidence, instead of evidence by affidavits, the petitioner or respondent should apply, by motion to the Judge, for an order directing a *vivâ voce* examination of the witnesses, at the hearing; the result of which application would depend upon whether, in the opinion of the Judge, the ends of justice would be best attained by the examination sought for. In any case, whether the direct evidence be taken *vivâ voce* or by affidavits, each party would be entitled to cross-examine the opponent and his witnesses at the hearing.

The cause having been set down, and the Judge having pronounced the decree at the hearing, he would proceed *himself*, in chamber, to take any accounts, or make any inquiries directed; the party having the carriage of the proceedings issuing a summons for that purpose.

In some cases, in chamber (where, for example, inquiries as to the next-of-kin or heir-at-law of a deceased person are to be made, or a partnership account taken), charges and discharges would be necessary; but in cases in which an account of incumbrances affecting land, or an account of debts or legacies is to be taken, or upon the allocation of funds, the party having the carriage of the proceedings should prepare a schedule of the incumbrances or debts, &c., according to the best of his information, and give notice to the parties, and to persons believed to have demands, and also by advertisement to the public, that the schedule is lodged with the Examiner for inspection; leaving it to any party whose demand may be omitted, or improperly entered, or to an incumbrancer, or other party, who make think himself injuriously affected by the schedule as prepared, to make his claim; and afterwards, if necessary, to bring his case before the Judge, by an objection in writing, verified by affidavit, to which all parties should have an opportunity of replying.

The schedule should be finally vouched and settled on a meeting before the Judge, and his order, in respect to each matter, should be made in writing on the schedule.

The cause should then be set down for final hearing in Court, and the final decree should be attached to the schedule, and the whole preserved as one of the records of the Court.

12. As an illustration of the inconvenience of a *vivâ voce* examination before the Examiner of the Court of Chancery, I may refer to a cause of Bird *v.* Donnelly, now pending in Master Litton's office, in which the Master lately directed an examination as to the items of an executor's account, to be had before the Examiner.

There were meetings for the examination on seven separate days. There were only five witnesses examined.

If the examination had been deferred to the hearing of the cause, a few questions asked of the witnesses, under the control of the Master, as each disputed item of the account would have come under discussion, would have been sufficient to elicit every material fact; and the case would not, in my opinion, have lasted half the time which it occupied before the Examiner; but the cause is yet to be heard, with several objections to the admissibility of evidence, which would have been disposed of at once, and I think without argument, had the Master been present. I am quite sure the hearing before the Master will yet occupy, at least, as much time as it would have occupied had the Master heard the evidence himself.

In reference to the practice in the offices of two of the Masters as to receiving evidence by affidavit, I beg to give a copy of the Master's ruling in the cause of Archer *v.* Leonard, made on the 10th July, 1862:—

"Let the parties be at liberty to prove their cases respectively by affidavit, the last affidavit to be filed, and publication to pass, on the 20th October, on the usual terms, that the party on whose behalf affidavits are filed, must produce his witnesses for cross-examination if so required."

(Signed), HENRY M. PILKINGTON.

November 1, 1862.

9. Answers to Questions on Equity Practice and Procedure. Hugh Law, Esq., Q.C.

1. I think the present system of proceeding by cause petition and affidavits, in the Courts of the Lord Chancellor and Master of the Rolls in Ireland, under the Chancery Regulation Act of 1850, works unsatisfactorily in several respects. Thus, without noticing mere details, our procedure is, in my mind, highly objectionable in its combination, or rather confusion of pleading and evidence in the same document; in the indefinite allowance of alternate statements, instead of having fixed times for closing, first the pleadings and then the evidence; in the practical admission of hearsay, and other illegal evidence in affidavits; and in the absence of any efficient check on their manifest tendency to misstatement and suppression of material facts.

2. The first change I would suggest in our present system is that there should be the same distinction as in England between pleadings and evidence; in short, that in this respect at least, the English system should be adopted here. That the suit should be commenced by filing a printed bill, and service effected by delivery of a copy to the defendant, either within or without the jurisdiction (but, in the latter case, with the leave and under the direction of the Court); and that appearance should be required as in England, and demurrers and pleas, as well as printed answers, be then available as means of defence. As to service of a defendant out of the jurisdiction, I can see no reason why this should be authorized only in suits respecting land or charges on it, or stock, or shares in companies, as provided by the Statute 2 William IV., chap. 33; and 4 and 5 William IV., chap. 82; enactments which were found to be insufficient in England, and have likewise proved insufficient here.

Again, I think our system of altogether dispensing with a defendant's appearance during the progress of a cause, and yet admitting him to appear suddenly and defend by argument at the hearing, is objectionable; though, on the other hand, I confess I cannot see what necessity there is for requiring the plaintiff to enter an appearance for the defendant, and give him notice of all subsequent proceedings, as in England. The time for a defendant to demur, &c., might just as well run from the day on which he is served with a copy of the bill; and, if he does not choose to appear, I think the plaintiff should not be bound to take any further notice of him; and that certainly he should not be permitted to offer any opposition at the hearing. If, however, he desires to intervene at that or any earlier stage of the cause, subsequent to the time limited for demurring, he should, no doubt, be allowed to apply to the Court, by special notice, for liberty to enter an appearance, and this as a general rule should be conceded to him; but of course on the terms of all previous proceedings remaining undisturbed.

In the next place, I submit, the pleadings ought to be formally closed, and issue joined, before any "*evidence*" (strictly so called) is taken; and here I think the English system is, on the whole, such as practically to meet the requirements of every case—setting down the cause for hearing on bill and answer, if there be no further controversy as to facts; moving for a decree on affidavits where the facts are not very seriously disputed; and proceeding by replication and more formal evidence, when there is irreconcilable contradiction between the parties.

In the simple cases which can be disposed of on motion for decree, the system of alternate affidavits, limited as in England, seems unobjectionable; but where the controversy as to facts is more serious, issue should, I think, be formally joined by replication, and then in the first place a short time be limited, within which either party might apply for an order to have any material facts proved *viva voce* at the hearing; and in the next place, as to all matters not included in any such order, another and longer time fixed, within which *both* parties should *simultaneously* prove their respective cases by affidavits; the deponents being always liable to cross-examination at the hearing, if notice shall have been duly given. The subject of evidence, however, will be more conveniently dealt with in answering the fourth question.

3, 5, and 6.—I think the working of the Masters' jurisdiction, under the 15th section of the Chancery Regulation Act, is very unsatisfactory, as, indeed, any summary or other jurisdiction exercised under like circumstances must inevitably be. Their rooms are not "*Courts*" in any proper sense. No publicity attends their proceedings. The cases heard by them are not reported; and thus, as might be expected, their decisions carry too little weight, and the course of practice before them, is almost necessarily loose and uncertain. The Masters sit one day in their original ministerial character, investigating accounts and framing reports for the Chancellor, and the next day sit as *Judges* hearing causes themselves in the Chancellor's stead. Neither they, however, nor those who practice before them, seem sufficiently to realize the wide difference between these functions; and the result is, that the hearing of a cause before a Master, under the 15th section, is practically conducted with as little regularity or precision as any dispute about an executor's or receiver's account. Again, from the like causes, uniformity of practice has not been sufficiently observed by the different Masters. One Master holds a respondent concluded unless he appears at the first summons, whilst others regard this step as merely an application for directions as to the conduct of the cause, and the respondent's non-appearance, therefore, as immaterial. One fixes a day for publication of evidence to pass, giving each party all the intervening time to prove his case, so that, in effect, neither sees his opponent's evidence till all is closed; whilst another allows the alternate system of successive affidavits, in which each party goes on indefinitely contradicting the last preceding deposition of his adversary. One Master, again, requires any *viva voce* evidence to be given before himself *at* the hearing; another before himself *before* the hearing; whilst another refuses himself to hear any *viva voce* evidence at all, insisting that such shall be taken before the Examiner of the Court.* Now, the remedy, as it seems to me, for all this is simply to abolish altogether the office of Master as now constituted, to appoint additional "*Judges*" to hear and decide causes, and to have the necessary accounts taken, and other inquiries conducted by the Judge's clerks, under their direct superintendence, as in England. With this view I would suggest, that whilst one Master might be retained for receivership accounts and other matters, the three other Masters should be permitted to retire. That the Landed Estates Court should be abolished, and its special powers be transferred to the Court of Chancery, as recommended by the Incumbered Estates Commission of 1856; and that two Vice-Chancellors should be appointed. By these new Judges and the Master of the Rolls, with the assistance of competent clerks appointed by themselves, all the business now transacted by the Masters and the Landed Estates Court might well be done, and that, I apprehend, more expeditiously and cheaply than at present. As to the proceedings of the Landed Estates Court, its separation from the Court of Chancery is a continual source of delay and expense. The sales of land are now no longer almost all at the instance of mortagees or other incumbrancers, but a very large proportion of them is consequent upon administration and other suits, in which the Landed Estates Court is incompetent to give suitable relief; and thus one part of the proceeding has to be carried on in Chancery whilst another is conducted in the Landed Estates Court, entailing on the parties, of course, additional

* The mode also in which the Masters' decrees and orders are made up is often complained of, and is, I think, highly objectionable. The "carriage" of the order is given to one of the parties interested, who generally prepares the draft with a view to his own benefit; and the draft thus prepared is then lodged in the office to be finally settled by the Examiner who has not been present at the hearing, and knows nothing whatever of the case. If, therefore, this jurisdiction of the Master is to be retained, I would suggest that at least their draft decrees should be framed by a competent officer present at the hearing, who should furnish copies to the parties and refer their objections (if any) to the Master; and that in all cases the Master should himself finally settle the decree.

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delay and expense. Except in particular cases all judicial sales ought, I think, to confer on the purchaser an unimpeachable title. The causes which required the establishment of a special tribunal for the sale of land in Ireland have happily ceased to exist, and I can see no reason why its peculiar powers should not now become part of the ordinary jurisdiction of the Court of Chancery.

Causes should, I think, in the first instance, be set down for hearing before the Master of the Rolls or one of the Vice-Chancellors; and appeals should lie from their decisions to the "Court of Appeal in Chancery," which would thus, with advantage, be more fully occupied than at present. The Chancellor, however, would still, of course, have power to transfer causes to his own court for hearing there; and, in special cases, it might be open to either party to apply that the cause should be transferred to the Chancellor's list, and even to that of the Court of Appeal in Chancery, and this be done accordingly.

4. I think the present system of taking evidence in the Court of Chancery and Masters' offices is by no means efficient or satisfactory. Affidavits may be said to be the only proof now given here in a Chancery suit. They are almost always loosely framed, loaded with statements of facts on mere *hearsay* or *belief*; they are made alternately on each side, so that contradiction is invited, and the facts thus often hopelessly obscured, whilst the liability to cross-examination is so fitful and uncertain, that its corrective influence is wholly lost. Now, affidavit evidence thus given seems to me to constitute as unsatisfactory a basis for decision as can well be imagined. Affidavits are, doubtless, a cheap and convenient means of ascertaining facts about which there is no very serious controversy, and should, I think, be retained as the *ordinary* instruments of proof in a Chancery suit; but to make evidence by affidavit satisfactory or trustworthy, even in the simplest cases, certain safeguards seem to be required. In the first place, I would suggest, that instead of encouraging the statement of facts on mere hearsay, by rules requiring the deponent to add the sources of his information (an abuse which probably crept in from the old *answer*, in which the defendant gave the plaintiff "*discovery*," as well as stated his *own* case), all such illusory attempts at proof should be prohibited, and the facts be deposed to (if at all) by those who, at least, allege they know them. It is impossible to imagine why the casual unsworn statement of one man, which, if so made in Court by himself, would be no evidence whatever of a fact, should at once become evidence merely by another swearing that the statement was made. Not only is it that no oath is pledged to the truth of such reported statement, but the Court has not even got before it the person whose unverified story is to be accepted as evidence, so as to ascertain that *he*, at least, speaks from personal knowledge, and not from mere information. Again, the admission of a person's *belief* of a fact as any evidence whatever of that fact, seems alike indefensible whether he gives or withholds his grounds of belief, though the statement of these may be good evidence if they be *facts* within the defendant's own knowledge. In short, in these and other respects, I can see no reason for drawing a distinction between written and oral testimony, or between the investigation of truth in Chancery and at Common Law; and I would accordingly recommend, that the rules of evidence should be as strictly enforced in Chancery affidavits as they are in the testimony of witnesses at Nisi Prius.

Assuming, then, that all statements which would be inadmissible on the examination in chief of the witness at Nisi Prius should be excluded from his affidavit in Chancery, there ought, I would suggest, to be some summary process for expunging any such improper statements *before* the hearing of the cause, so that nothing objectionable shall then be adduced. Accordingly, I think applications for this purpose should be placed on the same footing as those to expunge passages for scandal or impertinence, and be dealt with upon summons by the Judge in Chambers. But, above all, there should, I would earnestly recommend, be one definite period fixed for *both* parties to prove their respective cases by affidavit or otherwise, instead of having, as at present, an indefinite series of alternate affidavits, in which each party is induced to depose or get others to depose to the precise contrary of his opponent's previous statements. Such a system, of course, multiplies contradictions, necessarily increases the difficulty of ascertaining the real facts, and leads to the grossest perjury. For it will readily be understood, that where each party has the opportunity of seeing and considering the effect of the other's testimony before he adduces his own, there will inevitably be contradiction, and probably perjury, as to many matters which would have been substantially admitted or agreed upon if each party had been obliged to prove his own case as best he could before the day of publication. There should, moreover, be the amplest opportunity for each party to cross-examine those who have made affidavits for his opponent; and this should, I think, be *viva voce* in open Court at the hearing, and before the Judge who is to decide the case, and not before the Examiner in what may be regarded as comparatively a private room. This cross-examination too *in open Court*, should be authorized by a general provision similar to the English Order of 5th February, 1861, rule 19, so as to be a matter of right, enforceable in *all* cases, and not of partial application, and to be obtained only on special motion to the Judge. Such might, perhaps, be sufficient, if it were desired only to detect and expose falsehood in the particular cases in which it may be supposed to exist; but assuming, as I think I may, that the chief object should be to prevent, as far as possible, untruthfulness in affidavits, it is clear that the liability to cross-examination in a public court must be, not exceptional and uncertain, but constant and universal. I would also suggest that this, as well as all other *viva voce* evidence, should be taken down by a short-hand writer attached to the Court, who, if required, could read out any portion of the evidence for the Judge or parties, or supply them or the Court of Appeal with a transcript of all or any part of it. These short-hand notes, too, might, in the meantime, be deposited with the Registrar, or some other officer of the Court for safe custody.

It frequently happens, however, that persons cannot be prevailed upon to make an affidavit for either side; and this difficulty should, as in England, be met, by enabling the party requiring such person's evidence either to bring him before the Examiner and examine him *ex parte*, in which case the deposition should be returned and dealt with as an affidavit, or to enforce the attendance of such person as a witness for examination *viva voce* at the hearing of the cause.

Again, examination and cross-examination before the Examiner, as at present, might still be permitted, when the parties consented to that course being taken, or when a witness was too ill or infirm to be examined at the hearing, and an order had been made to that effect.

I may add, that I think affidavits also should be printed, though, for obvious reasons, not until the time for filing them has passed. The parties, therefore, should be at liberty to file written affidavits, on their undertaking to lodge printed copies within a limited time after publication, or such lodgment might be enforced by a general order to the like effect.

So far, then, as to affidavits, which, with the safeguards and correctives thus suggested, may, I think, be confidently received and relied on as satisfactory evidence of all facts about which there is no very serious dispute. Cases, however, will, no doubt, frequently occur, in which, from the very first, the parties must be aware that their statements, either all or in part, will be so hopelessly contradictory, that more efficient means of ascertaining the truth must be resorted to. To meet this contingency, I would suggest that the provisions of the English Order of 5th February, 1861, rules 3, &c., should be adopted here, and the Judge accordingly be authorized to make an order on the special application of either party, that the evidence as to any facts or issues be taken *viva voce* at the hearing. The rest of the case then being already proved by affidavits, these disputed issues would now be inquired into by examination and cross-examination of the witnesses in open

Court before the Judge himself; and the truth of the affidavits being at the same time tested, if necessary, by cross-examination, he would thus have the best possible means of ascertaining the real facts, and be enabled satisfactorily to decide the case. It has, I know, been strongly urged by some, that in these cases of direct contradiction as to matters of fact, it should be in the absolute power of either party to require the issue to be determined by a jury, under the Chancery Act of 1858; but I confess it appears to me much better to leave the adoption of this course to the discretion of the Judge. Except in some simple cases, where the decision of one or two disputed facts must determine the entire contest, the intervention of a jury would, I fear, cause serious difficulty and embarrassment. In the great majority of Chancery suits the matters of law and fact are so mutually involved, and the rights so liable to be affected by the nicest distinctions, that I do not believe any simple question of fact, such as would be intelligible to a jury, could be usefully separated and presented for their determination. Besides, such a course could only be resorted to to assist the Judge, not to bind him. It is he who must ultimately decide on the *whole* case, and it is obvious, that where his opinion as to some material fact differed from that of the jury, he would be seriously embarrassed in pronouncing his decision. I would, therefore, leave trial by jury to the discretion of the Court, as at present.

My suggestions, then, as to evidence result in this: that, whilst alternate affidavits should be permitted on motions for decree as in other motions, still, in all cases of direct contradiction as to matters of fact, issue should first be formally joined, and then a time be limited within which all affidavits should be filed, these being in every case liable to the test of cross-examination at the hearing, at which also the seriously disputed issues of fact should be determined upon examination and cross-examination of the witnesses in open court.

7, 8, 9, 10. There is another part of our system to which I would call attention, as in my opinion requiring alteration, and that is, the practice as to the "production of documents." Save where the possession of material documents is already admitted by the pleadings, the right to enforce production is limited in Ireland to cases in which the applicant can state on oath that he believes certain specified documents of this character are in the possession of another party (or *quasi* party) to the cause; the production being thus made to depend, not on the substantive fact of such possession, but on the mere accident of that being known to the other parties. It is obvious, however, that where the existence of certain documents is known, there will generally be some knowledge also of their contents or purport; and accordingly the result is, that the discovery is given only where it is comparatively useless, and carefully withheld where the parties are most in the dark, and it is therefore most required. Now, it is, I submit, the naked fact of possession by one party of documents materially affecting the rights of all that justifies the Court in insisting on their production; and this fact should, I would suggest, be ascertained, as in England, by authorizing any party to require from any other an affidavit declaring what material documents he has in his possession, and for the production of which application could then be made. There is, indeed, a defect in this part of the English practice also, the production of documents not being enforceable there between co-defendants, as with us, but that may readily be amended.

As to "the other parts of the practice and procedure of the Court of Chancery in Ireland, under the Irish Chancery Regulation Act of 1850," besides those already observed upon, they are of comparatively small importance. In themselves they are, perhaps, for the most part, unobjectionable; but I would earnestly recommend that the system of procedure, as a whole, should be made identical with that of the English Courts of Chancery. There is nothing whatever to justify the maintenance of a distinct and different system here. Without insisting on the truth, that all needless distinctions between the two countries are mischievous in many other ways, I would submit, that even if our system of procedure were in itself as good as the English, it must be less satisfactory and efficient by the mere fact of its being different; for we are thus deprived of all the assistance which the English reports and text-books would otherwise afford us, and this is much more than enough to counterbalance any small merits our system may be supposed to possess. But, in truth, the English system of Chancery procedure appears to me to be, in all important points, greatly superior to ours; and therefore I would gladly see it entirely adopted here, and wait for such improvements in the common system as the experience of both countries may from time to time suggest.

(Signed), HUGH LAW.

20th December, 1862.

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10. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. HENRY J. LESLIE, Esq., Barrister-at-Law.

1. The result of my experience and my opinion of the present system of proceeding referred to in this question is, that that system has, in many respects, worked a beneficial change in the system of procedure previously prevailing, by shortening and simplifying, by lessening expense, and by producing various other beneficial effects; but looking at this present system of procedure without comparison with that which preceded it, my opinion is, that it does not work satisfactorily, and that great evils have arisen in practice which might have been avoided by a system equally, or rather much more effectual in remedying the defects of the procedure previously existing. Being (as I am) of opinion, that the proper remedy for these evils, as well as for those which appear to me to arise in other parts of the system, referred to in the third, seventh, and eighth questions, is not to be found in partial or minute alterations, or dealing with details, but in an adoption of a system in conformity with that now existing under the 15th and 16th Vic. c. 86, in England, remedying at the same time certain matters which to me appear defects, or which would, at all events, I think, be found so, in the application of the English system to Ireland, in which certain variations or omissions are necessary, from the difference of laws or procedure. I think it better in this place, before referring more minutely to the evils existing, to answer here in part, the third, fourth, and seventh queries generally, in the outset, by stating, that I am of opinion that the system referred to in all these queries, while working reform of abuses, has been attended with great evils, which might have been avoided, and may be prevented.

It would be impossible within the limits of concise and intelligible answers to these questions, to point out all, or even a very large proportion, of the evils arising in the practical working of the system in its several branches. With reference to the first question, the best way is to try the system by the test of its effecting or not what ought to be the great end in view, the proper ascertainment of equitable rights in the mode most effectual for arriving at the truth, eliminating most readily the real questions of law and fact to be determined, and obtaining from the Court its decision with the least delay and expense avoidable, consistently with due and proper inquiry. With respect to the first proceeding, it is of course of little importance whether it be in the shape of a bill or petition, but there is no use in adoption of the latter name, and it

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was so adopted as that of a proceeding of a less formal character, and has, I think, resulted just as expressed in Mr. Jellett's statement, page, 5 :—"It is not considered as strictly speaking a pleading on behalf of petioner."—(See Daly *v.* Wade, 1 Irish Chancery, 375.) "Neither is the affidavit in answer regarded as strictly a pleading on the part of the respondent, it is in fact a mixture of both pleading and evidence, without any very accurate discrimination between the two."

This affidavit of the respondent is accompanied, generally, by a number of other affidavits containing the respondent's evidence. In practice, these which are not (like the respondent's own affidavit) necessarily settled by counsel, and which indeed it would not be a very agreeable task to counsel to settle, the contents being the evidence of persons on oath, are full of matter not legal evidence, or irrelevant, containing hearsay, exaggeration, falsehood, and truth, so blended together that it is hard to say whether the counsel who is to read passages from them containing legal evidence in support of his case or the Court which has to decide on admissible evidence, exclude from its mind the inadmissible, and extract the truth, has the more difficult task to perform.

There are, no doubt, rules for the affidavits.—(See rules of 19th May, 1857, No. 8.) They must, for instance, state what facts are within deponent's own knowledge, and his means of knowledge; what from other sources, and what such sources are ; but rules will never alter what is inherent obviously in the thing itself. It is to be recollected too, that the class of cases excluded from the operation of the 15th section, in reality are, many (I believe I might say most) of them, the cases of least serious importance in nature and amount of value ; and the suitors, those often in an inferior class of life, such as cases for renewal of leases, specific performance of contracts for leases, fraudulent deeds, suits for accounts against factors, agents, &c.; and in such cases, those who are accustomed to hear affidavits in this country may probably have no difficulty in coming with me to the conclusion, that this part of the system is ill-calculated either to eliminate the matter in issue, or enable the Court to come at the truth. A reference at random to the files of the Court would prove this. If a single instance is preferred I would refer to the affidavits in the well-known case of Handcock and Delacour. But if the evils I have pointed out thus arise with the affidavits filed on behalf of the respondents, they are certainly not diminished where affidavits come to be filed in reply, in which the irrelevant and exaggerated statements of hearsay, truth, falsehood, &c., come to be replied to. To pass them by is unsafe, and even if framed with skill and a desire to confine to proving and substantiating the matters in petition, or contradiction of new facts, as the inoperative rules require—(see Rules, Second Order of June, 1856 ; Murphy *v.* Jackson, 3 Ir. Jurist, N. S. 132)—the task is impossible; but, indeed, it is seldom attempted. And, of course, in addition to the confusion thus caused by the respondent's affidavits, those of the petitioner are themselves liable to be defective for all the reasons given with respect to those first filed, and all the previous observations apply with greater force to those filed in answer to those of the petitioner in reply.

On the whole, therefore, while, as already stated, I am of opinion that even this system has been an improvement of that which preceded it, and which was fraught with other and greater evils, I am of opinion, that the system of procedure referred to in the first question is most defective and calls for a remedy.

2. I have already in great part anticipated my reply to this question, as well as to the fifth question, by stating that, in my opinion, the remedy for existing defects in the system referred to here, as well as in that referred to in the third, seventh, and eighth questions, is not to be found in partial alterations, but in the adoption of the English system, under the 15th and 16th Vic. c. 86, as detailed by Mr. Barber, but with alterations in that system, necessary, as it appears to me, in some details, and which I will deal with—first, severally as they apply to the several parts of the Irish system referred to in the several questions, and in the several answers to those questions; and I will subsequently add my views as to some matters, variations in part and otherwise, arising from the difference of circumstances, law, and otherwise, which, in my opinion, will be essential to make such adopted system work in Ireland. First, as to details and as bearing exclusively on the portion of the system referred to in this second question ; and here I am, necessarily, in part, giving an opinion upon what I am not called on to do, a portion of the English system as applicable to both countries, though much more so to Ireland.

Referring to Mr. Barber's statement, and two of the modes of hearing a case there explained, viz., motion for a decree and affidavit thereupon, under section fifteen of the English Act, and replication, it appears to me, that in the first of these modes, unless with the alteration I am about to suggest, at all events as applied to this country, much of the evils which I have pointed out would arise ; and that in the second case an improvement might be made. I think a system which in substance has latterly been adopted and found, when properly adhered to, to work most satisfactorily in the Masters' offices here, would with great benefit be engrafted on it ; the principle of which is, first to ascertain the matters at issue, and then to have the direction of the Court as to the nature of the evidence, whether by affidavit or otherwise ; but above all things to provide, by fixing a time for publication, that the affidavits shall not in any case be answers one to the other, but each a statement on oath, without hearing the other affidavits upon the point in issue. I believe the Master of the Rolls has long since drawn attention to the importance and necessity of this.

The alteration that I would suggest in applying this part of the English system, would be this: the bill being filed, &c., as in England, with its paragraphs numbered, I would, as to every party who appeared, and from whom the plaintiff chose to require an answer, require that in his answer he should say, I traverse Nos. 1, 4, 6, &c., and I admit Nos. 3, 5, 7, &c., and take any not traversed as admitted. Something like this exists in the present system here, though, strange to say, the petitions are not necessarily in paragraphs, while answers and affidavits necessarily are. I would, when the answers have been filed, or replication, as the case may be, allow each party to have the advice of counsel as to his proofs ; and I would then suggest that the nature of the evidence, whether by affidavit or otherwise, as to the several matters in issue, should be directed by the Court, providing, as now done by the Masters, for the affidavits, where such were to be filed, not being mutual answers and replies, or rather, recriminations, but evidence on the matter in issue, without reference to the evidence of the other side. This resembles somewhat the English mode of hearing a case on replication filed, but differs from it by taking as admitted paragraphs not traversed ; and places in all cases under the control of the Court the nature of the evidence ; a mode which has been found in practice greatly to narrow issues, shorten suits, and prevent unnecessary expense.

In addition to the defects of the cause petition system, I am of opinion that it has failed in a most important part of Chancery relief, viz., obtaining discovery, the causes of which are, I think, in part owing to the system, in part to its working.

3. In the result this has become the part of the Chancery jurisdiction under which, as I believe, by far the larger portion of the business of the Court of Chancery has fallen, and a very large amount of business, both as to number of suits and amount of property, is transacted under it. In the practice which has been gradually established, it is, according to my experience, and in my opinion, the part of the system which has, so far as relates to the evidence by affidavit, practically worked the best ; but I am, nevertheless, of opinion, that it is open also to grave objections, and that serious evils are inherent in it, and that the application of the English system, with the modifications I shall point out as necessary, in my opinion, to its application here, would work a great improvement.

The objections I have pointed out to the loose form of

pleading, and its defectiveness in properly eliminating the issues, apply here with great force. There is not, I think, the same objection to the mode of evidence by affidavit, the practice in that respect being, in my opinion, as I have already intimated, an exceedingly good one; but where cases are to be heard on oral evidence, great difficulty often arises, for the business of the Master is of such a varied kind, judicial as well as ministerial, that, unless with rare exceptions, some of the Masters, and all, more or less, are unwilling to hear cases on oral evidence before themselves; and frequently in cases where, but for such difficulties, oral evidence before themselves would be desirable, remit such examination to the Examiner, a tribunal ill-suited for taking *vivâ voce* evidence in those cases where it becomes most useful, viz., where the demeanour of witnesses, personal bearing, and mode of giving their evidence, especially on cross-examination, are the chief guides to the Court. Whenever the Masters do hear cases upon such evidence before themselves, it necessarily causes a great interruption of the business and inconvenience to parties, and this is one of the inconveniencies and mischiefs arising from the incongruous duties of a Master filling at once a judicial and ministerial position. There has also, I think, a great evil arisen under this jurisdiction, in the confounding the duties and positions of the two professions of barrister and solicitor, to the great and constant annoyance and prejudice of both, as well as to the detriment of the decorum and propriety of the conduct of business; and this has, I think, been rather aggravated than amended by rules intended for its remedy—(See Rules of 24th September, 1860)—attempting to give a list of the cases in which barristers are to act, and those in which solicitors, and providing that in every other the case is to be brought before the Master, where the employment of counsel is desired on a previous day, to decide whether counsel should appear.

4. My answer to this question is, I think, substantially embodied in my answers to the preceding questions.

5. The answer to this question involves important considerations. I have already intimated my opinion that it is not changes in detail, but the English system, properly modified and made applicable, that is the remedy here. This, of course, would involve changing the Masters into Vice-Chancellors, aided by either Chief Clerks or Assistant Registrars. If this be done with a due regard to the adequate creation of such Courts, and the amount of business to be done, and carefully guarding against any delegation to inferior officers of any judicial function in any case, I think great good will be effected. I am satisfied, however, that if less than three, or, at least, two of such Courts be created, the inevitable result will be an injurious delegation to an inferior officer, and a depreciation of the character and competence of the Court, as well as an obstruction to business, causing mischiefs much greater than at present exist. I am further of opinion that the thing cannot be worked in this country unless the Assistant Registrars or Chief Clerks be members of the Bar, having standing and experience in Equity Law; and that notwithstanding such men be appointed, the duties confided to them should be, in all cases, strictly ministerial, not judicial; and that all decisions of judicial character should have the weight and sanction of the Court itself. I think there are two species of suits in which the difference of law and course of proceeding in the two countries will, in order to secure this object of confining the exercise of such duties to acts of a ministerial character, render it necessary to provide a qualification in the application of the English procedure to two of the classes of cases coming within the special practice in certain particular kinds of suits and proceedings specified in Mr. Barber's statement of the English system, page 65, I mean Numbers 1 and 3, there mentioned. With regard to the first "administration suits," the qualification in England excluding such cases in the administration of real estate from this mode of proceeding (see Mr. Barber's statement, page 66), "where there is intestacy, or where the real estate goes to different persons, or the estate is not all vested in trustees, empowered to sell and give receipts for the rents and profits, and produce of the sale." It is obvious that the intention here was that the proceeding should be applicable where all that was wanted was to aid the trustees in doing, through the machinery of the Court, what they were empowered to do by the will, viz., sell the property, or receive rents and profits, and apply them in favour of creditors and devisees, as directed by the will. The course of procedure with reference to the administration of real estates, has always differed materially in the two countries, in great degree, it is probable, from the greater solvency of landed estates in England, and the consequent importance to parties in such suits of establishing priority of claim. In suits to administer them they were, previously at least to the Acts making judgments charges, where dealt with in administration suits (judgment creditors not interfering by elegits), distributed as equitable assets, I believe, available for payment of judgment creditors equally. In Ireland, long before the Acts making judgments specific charges upon lands, and while they affected them only by a sort of hovering lien, with a right of execution by elegit of a moiety of the lands, the established system in administration suits was to deal with judgments as payable out of the lands in the order of priority, and in such suits to determine the rights of all persons having charges or estates in the lands. It is needless to say that in such cases, taking the account of creditors, mortgagees, devisees, &c., difficult and serious questions must generally arise. The laws have undergone frequent changes as to judgments, which it is unnecessary to go into, the last Act of importance in this country which created what are called judgment mortgages, creating a greater difference in the laws relating to judgments in the two countries than existed previously; but it is quite unnecessary for the present purpose to enter into these, suffice it to say that all these changes have not tended to diminish or prevent, but rather increase the probability of questions arising in administration suits; and there is even as to personalty a law and practice as to judgments different in some measure from England, which often creates questions of priority of considerable difficulty; but in practice, at all events as to real estates, there is, I may say, none or hardly any case in which the Court, in an administration suit (that is, where there are not questions to be decided on the trusts), is simply selling and applying produce of sale or rents and profits between creditors and legatees. The difference I would suggest here would be to withdraw from the special practice all cases relating to administration of real estate, whether devised to trustees for sale or not, and providing by rules that in administration of personal estate, all questions of priority when raised, shall be referred to the Court, whether sought or not. Secondly, as to mortgage, foreclosure, and redemption suits. Here the course of procedure in Ireland is entirely different from that in England; a foreclosure suit here being a suit to sell involving the ascertainment of the rights of all parties having charges or incumbrances on, or estates in lands. The erection of the Landed Estates Court, where all sales, including those under decrees in Equity, are now conducted, has greatly diminished the exercise of this branch of jurisdiction; and in most cases the Court of Chancery is unwilling to make a decree for foreclosure of a mortgage. But there are cases where accounts and ascertainments of rights being necessary, such are instituted and sanctioned, and where there are questions arising similar to those in suits for the administration of real estate; and as these suits are, as I have intimated, quite different from the species of suits in England coming under the head of foreclosure, I think they should not in this country be included in the "special practice" referred to. In cases, simply for redemption, where no sale is sought, the above reasons do not apply, but such a suit is hardly known in practice in this country.

With reference to the observations I have made, as to the necessity in introducing the English system to have a sufficient number of Courts, I beg to say that I have not omitted to advert to the fact, that a portion

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of the actual business, now occupying the Masters, they would be relieved from; but it is also to be considered that other business would, in many cases, be added, such as hearing *viva voce* evidence, now often deferred in cases where it should not be so to an inferior officer, and working unsatisfactorily. That there are at present four Masters, all fully occupied for the most part; and with reference to expense, (a matter which, indeed, ought not to be considered where the success or non-success of a new system is involved), there has already been a saving of over £4,000 a-year by the abolition of a Master and Examiner, on the decease of Master Henn, and there will probably be another saving in the reduction of the number of the Judges of Landed Estates, now palpably and admittedly too great for the business of that Court. There is a portion of the English system not, I think, required in this country, I mean the conveyancing counsel, the Landed Estates Court conducting sales, as adverted to, seems to render this unnecessary.

6. The practice has become much more uniform than it was at first; and though there are still minor differences, they are, I think, unimportant, at least in reference to the views which I have above respectfully submitted.

7 and 8. I have already in my previous observations referred to these questions, and in great part anticipated my replies to them. I would add here two branches of the jurisdiction, where, I think, the Irish system works very badly: I mean administering the property of minors and partition suits. On reference to Mr. Jellet's statement, page 81, it will be seen that one of the branches of jurisdiction comprised under the fifteenth section of the Irish Chancery Regulation Act, is the appointment of guardians, and allowance of maintenance to infants. There has been some difference of opinion as to the intended application of the jurisdiction to this where the management of a minor's property was sought, not as ancillary to other subjects of suit; and in practice, it may be added, that minors are usually made wards by ordinary (not cause) petition, and the property administered in like manner, according to the old system, a petition being required at every step, and where the object is the most trifling, involving an enormous expense in the management of minors' property, as well as very gross abuse. At the same time I do not think a cause petition under the fifteenth section at all calculated in its working and machinery for the best exercise of this branch of jurisdiction. With respect to partition suits, the other special matter I have adverted to, the old system of commission, with all the subsequent expense in evidence, titles, conveyances, &c., is unremedied. I think the introduction of the new English system, as to original proceedings by summons in proceedings for guardians and maintenance of minors, as at page 66 of Mr. Barber's statement, would be a great boon. I think, also, the introduction of the new mode of proceeding in partition suits, referred to at page 68 of Mr. Barber's statement, as to Ireland, would work a great improvement in these suits.

It would, of course, follow from the alteration suggested, that appeals from the created Vice-Chancellors to the Court of Appeal, and the adoption of the English system, would also remedy a strictness now prevailing, as to rehearing by Courts. A great mischief arises in the present system in the constitution of the Court of Appeal for appeals from the Lord Chancellor. I have not sufficiently formed my opinion as to the proper remedy, and will only say that the matter should be considered, and some remedy devised.

9. I do not feel competent to offer any suggestion in answer to this inquiry, not having sufficient practical acquaintance with the recent Equity system in England.

10. I have already in previous answers anticipated my reply to this. I think, in great part, the provisions of the Act of 1852, chapter 86, might be advantageously extended to Ireland. I beg to refer at the same time to qualifications in my former replies, and in that to this question. I think the best mode of extending the English system would be to omit all details of practice, especially with reference to the proceeding by summons, leaving it to the Court to make rules, and enacting "that no business involving any exercise of a judicial character should be delegated to any officer."

11. The short time I have been able to devote to the consideration of these questions (having but recently returned to town, shortly previous to the commencement of term, and to the time named for the return of these replies) prevents my making other suggestions in answer to this question, which, with the time and opportunity for more full and accurate consideration, I might venture to make. There is one matter in this country I know, and I believe, too, in England, productive of great expense and obstruction to the suitors, and for which I would suggest what to me appears a very obvious and simple remedy: the evil I refer to is the enormous expense and delay incurred by attested copies of pleadings and affidavits in the Court of Chancery. This has a most pernicious effect, and is, I believe, a chief source of the delays in suits, imposing on solicitors, at every step a great outlay, often necessarily exceeding what even in the most successful result can be recovered from the opposite party. These are often voluminous and prolix, and the proceedings to remedy this are seldom adopted, often only involving additional expense, and it being exceedingly difficult for a Court, unless in very gross cases, to determine what is prolix, especially before the final hearing, nor always, or sufficiently even then. To a certain extent a provision is made against this in England by the 7th and 8th sections of the 15 and 16 Victoria, chapter 86, that is, so far as bills and claims are concerned, which are necessarily printed, and copies given; and there is also a power vested in the Lord Chancellor as to the costs of giving out copies by the 5th section of the 15 and 16 Victoria, chapter 87. But it appears to me that in the case of Bills the English system of printing imposes an unnecessary expense, and, at all events, the bills form but a very small portion of the documents, as to which the evil applies, and as to which the remedy is called for; and it would impose an immense and unnecessary expense on suitors to require that all documents filed by them should be printed. Indeed, considering the expedition constantly required in filing after obtaining the necessary information and conducting inquiries, &c., within the time allowed, any rule requiring a general printing of documents would, in my opinion, impose obstacles and difficulties almost insuperable, besides the enormous expense it would entail; and, on the whole, I would suggest the system as to the furnishing of copies I am about to detail, and the omission in the application of the English system to Ireland of the provisions as to printing contained in the 7th and 8th sections of the English Chancery Regulation Act, which I have referred to.

The system I propose is a following out more fully of that which has been established in the Law Courts with respect to affidavits used on motions, where each party filing an affidavit, on which he intends to rely, is bound with the notice to furnish a copy to the other side. (See 13 and 14 Vic. c. 18, sec. 44). In Chancery, where there are, in general, many parties, documents, such as schedules, accounts of executors, partnerships, &c., &c., are often necessarily many and voluminous, I would suggest, as a remedy, that the solicitor of every party filing any document should be bound to keep an accurate copy or *fac simile*; and to furnish a copy to any other party requiring it, for such fees as the Court should direct; and that unless by his own wish, no party should be bound to take out attested copies, with liberty, however, for any party so desiring to take out such, at his own expense if the copy furnished should prove accurate, if otherwise, at the expense of the party furnishing the inaccurate copy. The Court also could, of course, always, if so desiring, refer to the file where the least suspicion of inaccuracy or variance was suggested. A considerable reduction of the necessary staff in the offices, with the consequent expense, would be also the result of this (as it appears to me) very useful alteration in practice;

and I am satisfied that it would greatly lessen the expense of suits, would tend to prevent delays, and even in some cases enable parties to assert their rights, whom this frequent necessary advance of money often deters from making even a first step towards the establishing of them, and compels to submit to a relinquishment of their just demands.

12. In reference to the answer to the last question, I would give as an illustration the following:—In the case of Anderson *v.* Craig, (an administration suit), an attested copy of the executors and trustees' account cost £11 12*s.* In the case of O'Connell *v.* O'Callaghan, without reference to the expense of the attested copies of previous accounts, the attested copy of petitioner's objections to items cost £4 10*s.* 6*d.*; that of schedule to the order before passed, £3 16*s.*; and assuming an appeal in that case, the attested copy of the *vivâ voce* evidence before the Master would cost, as calculated, £20; and when it is recollected that each party has to take such copies, the greatness of the evil may be appreciated.

(Signed), HENRY J. LESLIE,
8, Upper Pembroke street, Dublin.

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11. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. WILLIAM SMITH, Esq., Barrister-at-Law.

1. The result of my experience, and my opinion of the working of the present system of proceeding by cause petition and affidavits, in the Courts of the Lord Chancellor and Master of the Rolls in Ireland, under the Irish Chancery Regulation Act of 1850, is decidedly unfavourable. I viewed it at first as a hazardous experiment; and my experience has convinced me that it is not the system best calculated to elicit the truth or to serve best the attainment of justice.

I cannot comprehend why there should be a totally different system of procedure and practice in the English and Irish Courts of Chancery. If the Irish system is the best, why not adopt it in England; or if the English system is—as, in my opinion, on the whole, it is—preferable, why not adopt it in Ireland? It appears to me of great importance that the practice and procedure in both countries should be as nearly as possible similar. Prior to 1850, the Irish practice was regulated in a great measure in conformity with the English reported cases, which, since 1850, have become, as to practice, almost valueless here. Why should the familiar simple title of "bill" be ignored for the verbose one of "cause petition under the Court of Chancery (Ireland) Regulation Act, 1850," which must be prefaced to every cause petition? The English bill, as it now exists, and the Irish cause petition on the same subject, must be in all respects in terms the same, the title and the fact that the latter must be verified by a short affidavit, only excepted?

The requiring cause petitions to be verified in the form directed by this Act is in my opinion inconvenient, and of no practical or real advantage whatever. It precludes the Court from permitting amendment in a rational form; as no word or statement, however inaccurate it may be afterwards ascertained to be, can be altered. The petition must stand for all time as originally filed; and any necessary amendments, whether by striking out parties, adding new statements, correcting and explaining errors, and striking out unnecessary portions, must be done by distinct statements, to be written at foot of or annexed to the petition; presenting in many cases a very clumsy and apparently inconsistent record.

Experience has shown that the mode of verification by this short affidavit, which pledges the "belief" merely of the petitioner as to the acts and deeds of others, has not prevented the introduction of statements which, nevertheless, have turned out to be in fact unfounded; the "belief" of the petitioner being not unfrequently unconsciously confounded with conjecture or suspicion; and many allegations being stated by way of charge only.

Cause petitions are held not to be pleadings (Daly *v.* Wade, 1 Irish Chancery Reports, 372): we have, therefore, suits conducted *without a pleading*. No affidavit, save the short form at foot of the petition, unless in injunction cases, is to be filed in the first instance; that is, unless an affidavit by way of answer be filed. (See General Order, No. 1, dated 17th November, 1852.) Therefore, if no affidavit by way of answer be filed, the case is set down, and a decree taken without further proof or evidence.

The respondent may file his own affidavit by way of answer, or he may file *any other affidavit on his behalf* by way of answer. The latter is implied by the 6th Order, dated 19th of May, 1857, which declares that every thing stated in the petition shall be taken as confessed against an adult respondent, not under disability, unless it be denied or contradicted by the affidavit of the respondent, *or by affidavit made on his behalf*. Thus a defence may be made by the affidavit alone of a third person.

The same Order provides that any allegation of any material fact made by or on behalf of the respondent, in support of the defence, shall be taken as confessed by the petitioner, unless it be denied or contradicted by affidavit made *on behalf of the petitioner*.

This renders it necessary for the petitioner to file in every controverted case, a sort of voluminous special replication by affidavit, requiring as careful consideration of counsel as an affidavit by way of answer, involving very onerous duties in replying to every allegation, the truth of which is disputed; besides explaining, confessing, and avoiding, or qualifying other statements in the affidavit by way of answer, as well as in the affidavits filed as evidence.

The respondent must, within four weeks from notice of the cause petition, or before the petitioner shall set down his petition to be heard, file affidavits in answer thereto; and within fourteen days after the filing of affidavits by the petitioner in reply, may file affidavits in reply to any "*new matter*" alleged in the affidavits in reply; and no further affidavit shall be filed by either party without the leave of the Court on special motion before the Chancellor. (General Orders, 13th June, 1856, Nos. 1 and 2.)

Thus we have under this Act suits without pleadings, without plaintiff or defendant, and without issue joined. No time is fixed to limit the making of proofs on *both* sides; instead of which there is a species of competitive examination in swearing, little calculated to subserve the cause of truth or the interests of justice.

The respondent must file his affidavit in answer, as well as all the affidavits by which he means to prove his case, within the period allowed to file his affidavit by way of answer. *Contemporaneously* with the preparation of his affidavit in answer, he must, therefore, submit his case to advise proofs; and these proofs (if by affidavit) must be made *within the same period*. So that, practically, the respondent derives no benefit from the rule referred to, that matters stated in the affidavits in answer shall be taken as confessed against the petitioner, unless denied by affidavit in reply. The respondant must file *all* the affidavits to prove his case before he knows whether a single fact may be controverted, or whether the whole may be denied by an affidavit in reply, or whether any affidavit in reply will be filed at all.

Notwithstanding the general rules, there is scarcely a limit to the permission to file further affidavits, not unfrequently up to the very day the case is called on for hearing; owing to an unwillingness on the part of the Court to exclude evidence, which it appears to me has been occasionally carried to a dangerous extreme.

2. If the present system of proceeding by cause petition and affidavits is to be retained, which I think it ought not, I would suggest the abolition of the unnecessary long title, and of the short affidavit of veri-

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fication. That the petition be deemed a pleading, as well as the affidavit by way of answer, by which all issues should be raised. That after the filing of the affidavit in answer issue should be joined; and a fixed period, say a month, allowed, within which all parties should file their affidavits as evidence, with liberty to either party, on giving proper notice, to cross-examine at *the hearing*, *vivâ voce*, any person who may have made an affidavit. That the party filing the affidavit, should be bound to produce the witness (if living), or else that the affidavit be rejected, and that no further affidavit be filed or evidence admitted after the time allowed to file affidavits, save by special order and under special circumstances. That when it shall appear by affidavit filed within the proper time, that any proposed witness had declined to make a voluntary affidavit when applied to for the purpose; the party should be at liberty to produce and examine such proposed witness, *vivâ voce*, at the hearing, without any order; serving notice of the intention to examine the witness on the opposite parties, four days at least before the hearing. That the rule as to filing affidavits should not be held to apply to affidavits merely to prove exhibits or documents the validity of which may not be in issue. That cause petitions be printed, and a printed copy served on each respondent, with the notice to appear and defend, and on all persons sought to be bound by the proceedings. That a respondent be at liberty to file a general demurrer for want of equity, or a plea to the substance of the petition; the Court, in case the demurrer or plea should be over-ruled, to permit the respondent to file an affidavit by way of answer. To abolish the practice of examination and cross-examination before an Examiner or Commissioner, unless in cases where, owing to the impossibility of producing a witness in Court at the hearing, the Court may by order permit such examination or cross-examination elsewhere.

3. I have already stated my opinion as to the present system of taking evidence in the Court of Chancery, and suggested what changes it appears to me should be made therein; and I would suggest the adoption of a similar system as to the Masters' courts and offices.

4. The result of my experience and opinion of the working of the jurisdiction which the Masters exercise in Ireland, under the 15th section of the Irish Chancery Regulation Act, is strongly in its favour.

5. I would suggest that the Masters should, as to all cases referred to them under the 15th section, have as general original jurisdiction as the Court itself has; especially as to authorizing amendments of the cause petitions, the filing of petitions of revivor or supplement, the restoring of petitions dismissed for not obtaining a final order within the prescribed period, if that provision be retained; the abolition of the rule as to dismissing petitions, leaving it to the party to apply to the Master after a limited period to dismiss with costs for want of prosecution, and fixing a time at the end of which a cause petition shall stand dismissed without costs, if no final order be obtained and the petition be not otherwise dismissed. This rule, as to fixing a time for obtaining a final order, is not acted on by one of the Masters; and in my opinion it has introduced an inconvenient practice, especially in administration suits, where much expense may have been incurred in taking accounts, and through inattention the time for obtaining the final order may not have been extended. I think the Masters should have full power to authorize, or to institute service of notices on parties out of the ordinary jurisdiction of the Court, as fully as the Court may now do; and it would be desirable to establish as far as possible a uniformity of practice in the courts and offices of the several Masters. At present the course of procedure there is in many respects different, causing embarrassment to the practitioners. I think that a respondent should state his defence to a cause petition in the Master's office, if going to the whole relief sought, by an answer thereto on oath, and not by discharge.

6. In one of the Master's courts the petitioner is required to prove his debt or charge in the first instance, although no defence be made. The other Masters require no such proof against persons not under disability, taking the matters stated in the petition as confessed, just as the Court does. Some of the Masters refer the vouching of accounts to their Examiners, subject to any questions the parties may raise being submitted to the Master; another Master has the account vouched before himself. All the Masters have general lists of short and long cases: one takes them in their order, another has particular days for different classes of business. Another will not hear counsel in cases on the short list, but has a weekly special list of cases of a short nature in which counsel are heard. One Master declines to fix a time within which a final order must be obtained or the petition dismissed with costs, holding that he has a discretionary power to do so; the others act on the general rule. The points of more minute difference would be difficult to specify, each Master exercising a wide discretion under the particular circumstances of each case, and acting on that part of the 17th section of the Act, that he "generally may, without reference to any Rule or course of practice of the Court, save as herein provided, regulate the course of such proceedings in such manner as appears to him expedient for rendering the same inexpensive and speedy, so far as justice will admit."

7 and 8. I think that the practice as to special cases, under the 11th section of the Act, is unsatisfactory; I would suggest that the person averring the affirmative proposition ought to be petitioner, and those who contend for the negative should be named respondents. That the latter should enter an appearance, and that thereupon the case should be heard according to the English practice in similar cases. It appears to me that a petition as a special case, should be presented only where all parties concerned concur in that proceeding; and that where a person under disability is a respondent, the previous approbation of the Master on behalf of such respondent should be obtained, as well as when such a person is a petitioner or co-petitioner. (See *O'Reilly*, Petitioner, 1 Ir. Eq. Rep. N. S., 208).

I think that the practice under this Act, as to binding persons not named as respondents, is unsatisfactory; and that some case ought to be stated on record, in order to bind a person by service of notice who is substantially interested and may have a defence to make; and that some rule should be laid down as to when and how such persons are, if so advised, to make their defence. The anxiety to correct the great abuses under the old practice as to parties, seems to me to have carried legislation into an opposite extreme.

I think that each respondent who makes a defence should be compelled to enter an appearance. This is required by the Masters, but not by the Court as to cases before it.

I think that in cases of infant respondents, a formal answer at least should be filed by the guardian *ad litem*.

The mode of continuing proceedings by suggestion, is applicable only to abatements with respect to respondents or co-petitioners, and not to the case of a sole petitioner. I think it unreasonable that a motion to the Court for liberty to file a mere petition of revivor should be necessary; and I think an order to revive should be obtained in all cases of persons not under disability by a side bar rule.

I think a party obtaining a decretal order ought to be at liberty to enrol it without any order, after the expiration of the time limited for appealing against it to any branch of the Court, including the Court of Appeal in Chancery; or immediately after the making of the order by the latter branch of the Court, in case of such an appeal. Enrolment is necessary as the *terminus a quo* from which the period of appealing to the House of Lords is to be computed (Peyton *v.* Lambert, 7, House of Lords' Cases, 423); and at present no decretal order can be enrolled *at any time* without a special order. The 30th sec. forbids enrolment without a special order, until after the expiration of twelve months, allowed to appeal to the House of Lords, although no such appeal can be brought until after enrolment; and the General

Order, No. 203, dated 27th March, 1843, requires a special order for enrolment in every case after 6 months.

The rules as to dismissing petitions appear to me unsatisfactory; and in my opinion it would be better to limit particular periods with reference to general causes and causes under the 15th section, after which a party should be entitled to apply for an order to dismiss with costs for want of prosecution, leaving the Court or Master to deal with each case, and fixing a period at the end of which a petition should stand dismissed without costs, similar in principle to the 81st General Order, dated 27th March, 1843.

The change, however, that I would mainly suggest, is the general adoption of the same practice as shall be observed by the English Court of Chancery.

9. In my opinion there is not any provision of the Irish Chancery Regulation Act of 1850, or any other statute respecting the jurisdiction, practice, or procedure of the Court of Chancery in Ireland, now peculiar to Ireland, which might be advantageously extended to England.

10. In my opinion, the provisions of the Acts respecting the jurisdiction, practice, or procedure of the Court of Chancery in England, now peculiar to England, might be advantageously extended to Ireland.

11. I can suggest no change with respect to any other parts of the law and practice of the Court of Chancery, common to both England and Ireland.

12. I have already referred to cases, illustrating the views I have stated in my answers to the questions put.

(Signed), WILLIAM SMITH,
Merrion-square, South.

1st Nov., 1852.

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12. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE.—FINCH WHITE, Esq., Barrister-at-Law.

1. Not having been called to the Bar until after the substitution of cause petitions for bills, I do not consider myself qualified to offer any opinion as to the expediency of restoring in whole or in part the old system of pleadings in Chancery, but I have no hesitation in saying, that in cases where the facts are in dispute, the present system of proceeding by cause petition and affidavit does *not* work well. The loose nature of the statements in those documents afford considerable facility for misrepresenting or concealing the true state of facts. The cause petition can scarcely be said to be verified at all, the short form of affidavit being that always used when the petitioner himself verifies the petition; and the rule which provides that the statements in the cause petition not contradicted in the answering affidavit shall be taken as admitted, necessarily tends to encourage a practice of denying in the answer, for the purposes at least of the existing suit, nearly every statement in the petition, or in other words, putting the petitioner on proof of his case; and this practice (which is to a great extent unavoidable) of mixing up pleading and evidence in the answering affidavit (though the affidavit is held not to be, strictly speaking, a pleading), tends, I think, to detract considerably from the weight and credibility of the document as evidence of disputed facts; and although I do not by any means agree with those who would substitute in all cases *viva voce* evidence for testimony by affidavit or interrogatories, I am of opinion that the less the document which the client is called upon to swear to partakes of the nature of a pleading the better. The client is in general too apt to consider the affidavit as the composition of his legal advisers, and to think that they share with him, if they do not altogether bear, the responsibility of its truth.

Another evil result of the rule above mentioned, and of the doctrine that issue is not joined at any particular stage of the cause, is the great difficulty of advising proofs. The defendant's advisers must, if they would be safe, direct, in the first instance, proofs, *i.e.*, corroborative affidavits of the statements in the answer, before they know whether they will be necessary at all or not—that is, they must direct proofs, as it were, *a priori*, on the supposition that the affidavit in reply will deny all the statements in the answer, whether true or false, because the affidavit in rejoinder of the defendant is to be confined to such *new* matter as is stated in the affidavit in reply: in short, it is in the present system extremely difficult to know what proofs to direct in a cause; and I think this difficulty often leads to a failure of justice, if the Judge be strict in requiring or admitting evidence, and attempt in hearing the cause, as is sometimes done, to incorporate the old system of proof with the new system of procedure and pleading. Thus, I conceive that considerable evils follow from mixing up pleading and evidence in the answering affidavit, from allowing uncontradicted statements in the cause petition and answer to stand as proved, and from there being no stage of the cause at which issue can be said to be joined.

2. (*a.*) I conceive that the time allowed for answering and for filing affidavits in reply is wholly insufficient in important cases, and leads, in many instances, to a failure of justice; it causes the cases to be presented to the Court hurriedly, and without being properly sifted, and in many instances practically prevents the clients from availing themselves of the services of the leading members of the profession.

(*b.*) I think that the 27th Order of July, 1851, (assuming the construction put upon it by the Master of the Rolls to be the correct one), is most inexpedient, and operates unjustly towards the petitioner in cases where there may be any difficulty in effecting service of any one or more of the respondents, or where an understanding or collusion may exist between co-respondents. There is scarcely a cause in which the defendants are numerous in which this rule does not create embarrassment and lead to injustice. I think it is unjust towards the petitioner to oblige him to force on the hearing of the cause with such rapidity; it is a trap for the unwary, and tends to throw obstacles in the way of compromises.

(*c.*) I think amendments of the cause petition should be allowed without the necessity of any special order for the purpose, at least before answer; and I see no object in requiring an order for liberty to file supplemental cause petitions, &c.

(*d.*) As far as I can judge, I should be strongly disposed to say that the abolition in general cause petitions of references to the Masters, and the introduction of the system of each Superior Equity Judge working out his own decrees, would be a great improvement upon the present course of practice. I think the system works well in the Landed Estates Court, though, no doubt, much of the success and facility with which it works there is owing to the great *industry and accessibility* of the Judges; but I think it would be essential to the proper working of the system in the Equity Courts in this country that the Judge should, himself, as at present in the Landed Estates Court, work out the details of his own decrees fully, and (whether the business be called chamber or court business) transact it in some public and open court, and that no judicial or *quasi* judicial functions of any sort should be delegated to chief clerks or other subordinate officers.

5. (*a.*) In cases where accounts must be taken, I think the system of proceeding under the 15th section of the Chancery Regulation Act, although capable of improvement, works tolerably well; and those constitute the great bulk of the cases which are at present referred under that section; and I think the comparatively small number of appeals from the Masters affords some evidence that the real questions involved consist principally of accounts or other disputed facts. In short, I think that the number of appeals may, with sufficient

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accuracy, be taken as representing almost all the cases of any magnitude in which questions of law or construction are involved, and I think the small number of appeals is also some evidence that the system does not, in the majority of instances, work badly. No doubt there are several cases referred under that section which could be far more advantageously heard by the Court in the first instance. I have, myself, been concerned in three or four cases, in which the facts not being in dispute, all that was required being the decision of the Court upon the *construction* of an instrument or the *principle* on which accounts should be taken, I directed them to be set down as general cause petitions, in the hope that the Court would intimate its opinion upon the question about which the parties differed, and thus render all proceedings in the Master's office unnecessary; but the Court, without hearing the cases fully opened, referred them under the 15th section, and the result was, that very considerable expense was incurred in the office, and the questions involved, which could have been heard and disposed of at the outset, came, after the lapse of six or eight months, before the Rolls on appeal. But this defect, although a serious one, is not, I think, inherent in the system of 15th section cause petitions; and if the Masters are to be still retained as part of the judicial staff of the Court, this evil might be obviated by slightly altering the classes of cases which should be referred under the 15th section, and by the Court, either under some general order or otherwise, encouraging the litigants to submit to its decision in the first instance such questions of *principle* and *construction* as it is plain must ultimately be decided between the parties, although they may arise in cases falling within those included in the class of 15th section cause petitions.

(*b.*) If Masters and 15th section petitions are to be retained, I think the appeal to the Master of the Rolls should be abolished, and the appeal be direct to the Court of Appeal in Chancery, as it is from the Landed Estates Court, Bankrupt and Probate Courts, &c. There is no reason that I can see for having three opportunities for appealing in 15th section cause petitions, and only two in general cause petitions.

(*c.*) I agree with Mr. Jellett's statement, that the practice in the offices in 15th section cause petitions is not uniform, *e.g.*, in one of the offices it is not the practice to file a discharge until after the first hearing, while in the others a discharge is filed before the case comes on at all. Again, in some of the offices a practice prevails, according to one of the Master's rules, of fixing, at the first hearing, a day for making up the final order. I can see no advantage whatever in such a practice. It is obviously impossible for a Judge, the moment a case is opened, to know what length of time the accounts, proceedings, and investigation of the case ought to occupy; and it is not difficult to see that the rule, that if the final order be not made up by a certain day, the petition shall stand dismissed, easily leads to collusion and injustice.

I have only to add, that if it shall be considered expedient, instead of assimilating entirely the Chancery practice in both countries, to substitute the English practice for the Irish in respect to any particular branch of equity, or to any particular class of cases, it will be most desirable, in my opinion, that, at least, as to such branch of equity or class of cases, the substitution should be complete, so as to render English decisions of use in this country, and prevent, as far as possible, the uncertainty and inconvenience that arise in the development of a new system of practice, and the differences in matters of detail that almost necessarily result from the different habits of mind of the Judges who administer it.

(Signed), FINCH WHITE.

Richard W. Gamble, Esq., Barrister-at-Law.

13. ANSWERS to QUESTIONS on EQUITY PRACTICE and PROCEDURE. RICHARD W. GAMBLE, ESQ., Barrister-at-Law.

1. As far as my experience enables me to judge, the present system of proceeding by cause petition and affidavit in the Courts of the Lord Chancellor and Master of the Rolls in Ireland, under the Chancery Regulation Act, 1850, urgently requires amendment, but with amendment could be made to work very well.

At the outset I would say, that speedy justice cannot be attained unless there are two modes of bringing general causes to a hearing: one of them suited to causes where the facts are few and simple and the evidence not contradictory, and which I shall hereafter call "short causes;" and the other suited to causes where the facts are numerous and involved and the evidence contradictory, which I shall call "long causes;" and it appears to me that most of the evils or deficiencies of the present system are to be traced to the fact that the necessity of this was lost sight of.

The Chancery Regulation Act, 1850, appears to me to have been intended to provide an expeditious system for the trial of such "short causes" only; but suitors have from the first been compelled to adopt the new system in all "long causes" also, though the Rules which were framed for carrying out the Act were suited only to short causes.

The first section of the Act left it optional to the suitors to proceed by the old system of bill and answer—to the Court to direct this mode of proceeding if necessary—and to the respondent at the peril of costs to require it. But the Court in an early case (Glascock *v.* Ross, 1st I. Ch. Rep. 55), intimated that it was desirable that all causes should in the first instance be tried upon petitions and affidavits, leaving it to the Court to direct such further proceedings as should be deemed necessary, and the costs being in the discretion of the Court, this announcement had the effect of abolishing the old proceeding by bill and answer as completely as if the Act had abolished it.

By the Rules as at first framed for carrying out the Act three weeks only were allowed to a respondent to file his affidavits in reply to the petition; and these were to contain his pleading and evidence indiscriminately; and then two weeks were allowed to the petitioner to file his evidence. These periods were immediately found to be too limited for what I have called "long causes," and the evil was sought to be remedied by numerous applications to the Court to extend the time, or for leave to file affidavits after the time had expired; applications which the Court was nearly always compelled to grant, as the parties were generally in a position to show that they could not make their proofs in the time allowed.

These applications soon became so numerous that in June, 1856, a partial remedy was applied by new Rules extending the time—giving the respondent four weeks to answer, and the petitioner three weeks to file affidavits in support of his petition, and the respondent again fourteen days to reply to new matter.

These periods, though sufficient in ordinary causes, are wholly insufficient in many "long causes;" and in practice the inconvenience would be much greater but for the courtesy of solicitors, who in heavy causes frequently enter into consents extending the time for both parties.

These considerations appear to me to point out the remedy, viz., to have one period fixed for short and another for long causes, leaving to the petitioner the option of seeking to proceed by the more speedy method.

For this purpose a system might be adopted similar to that of moving for a decree in England (see p. 9 of Mr. Barber's statement), leaving the Court power on such motion, at the instance of the respondent, to require the cause to be brought to a hearing in a more formal way. The time for serving notice of motion for a decree should be within (say) ten days after coming in of the answer, and it should be (say) a fourteen-day notice. And the petitioner should have power in such notice of motion to abandon any part of the relief which from

the answer he thinks he cannot sustain, and thus prevent further expense. Take one example: a petitioner seeking an account, and charging wilful default, the petitioner on seeing the respondent's sworn answer may be satisfied he cannot sustain the prayer for wilful default, and both may be satisfied to take the account in the office: they should have power to do so without delay.

Then, as to long causes, a more extended time should be allowed, within which each party should prepare their evidence and a time be fixed for the evidence to close.

Another deficiency in the present system is the mixing up of pleading and evidence. The 5th, 15th, and 18th General Orders of July, 1851, which at first regulated the mode of filing affidavits by the petitioner and respondent, neither limited a time for filing them nor made any distinction between pleading and evidence, so that it was then open to a party to file affidavits after the cause was set down and even up to the eve of the hearing. This was remedied by the Rules of November, 1852, which limited the time for the respondent to file his answer within twenty-one days, or until the cause was set down; and, as we have before seen, this period was again extended by the Rules of 1856. But no attempt was made until 1857 to distinguish between pleading and evidence. It was then provided by the 4th General Order of May, 1857, that a party should not be allowed to rely on any "matter of defence" not stated in the answering affidavit of the respondent, thus providing that whatever was intended to be put forward in the nature of pleading should be contained in this affidavit. But the objection still remained, that this was mixed up with a mass of evidence, and the evil was aggravated by the 8th General Order of 1857, which required the party to state, even in this answering affidavit, his means of knowledge and sources of belief, so that what should be a concise accurate pleading, verified by the respondent's oath, becomes too often a loose statement, half pleading and half evidence, with collateral circumstances brought in as sources of belief and arguments introduced as means of knowledge.

Under the present rules there is a strange inconsistency between the time allowed for filing affidavits and the time for setting down a cause for hearing. By the first General Order of June, 1856, the petitioner may set down his cause for hearing in four weeks after the filing of the petition, and yet by the second General Order of the same date the petitioner has three weeks, after the expiration of said four weeks, to file affidavits in support of his petition, and the respondent fourteen days after that to file affidavits in reply. So that a cause may be set down for hearing five weeks before the time has expired for putting in the evidence, and it has sometimes happened that a cause has been in the day's list for hearing long before the time was expired.

2. Alterations suggested to be made in the system of Procedure under the Court of Chancery (Ireland) Regulation Act.

(*a.*) That respondent be no longer required to file his evidence along with his answering affidavits, but that the answering affidavit be required to contain every "matter of defence" to be relied on, and be in the nature of a verified pleading, and the time for filing same might then be limited to (say) three weeks.

(*b.*) That on coming in of the answer the petitioner be at liberty to serve notice of motion for a decree for all or any part of the relief prayed, same to be heard on petition, and answer in a week.

(*c.*) That upon such answer being filed, the petitioner be at liberty (within three weeks) to serve notice (according to the English practice); that in four weeks he would move for a decree as to all or a part of the relief prayed for, grounding such motion, if he think necessary, on affidavits supporting his case; that the respondent be at liberty within four days after service of such notice to enter a side bar rule allowing a decree in the words of the notice, or within fourteen days to file affidavits in support of his case, the petitioner to have a week to reply to any new matter. All notices of motion for a decree served within three weeks of the first day of term to be listed for hearing during the term.

(*d.*) That in case no such notice of motion for a decree has been served, all the evidence on both sides, whether by *viva voce* or by affidavit, be closed within two months from the time of service of notice of the answer, unless the Court shall otherwise direct; with liberty to each party, within two weeks after such period, to call for a cross-examination of witnesses or to file affidavits in reply to any new fact contained in such evidence. The petitioner to be at liberty to set down the cause for hearing after the expiration of said two weeks.

3. The practice under the 15th section of the Chancery Regulation Act appears to me to work well, but cases are sent to the Masters under it, for which the practice appears unsuited.

The object of the 15th section of the Act was to send at once to the Master, without a formal hearing, all that class of business which was not likely to involve the consideration of difficult questions of law, or to require the judicial decision of the Lord Chancellor himself; and a selection was made of certain classes of cases—such as suits for the administration of estates, real and personal—for foreclosure and sale—and for partnership accounts—where for the most part there are only matters of account to be decided; but it was not kept in view that these classes of cases might also involve the most difficult questions of equity, such, for instance, as the construction of wills and deeds, and questions of priority, &c., and that the classes of cases thus handed over completely to the Masters included the largest share of the most difficult business of the Court of Chancery. In the Chancery Regulation Act, for the purpose it seems of preventing any inconvenience from this, a power was given to the Masters by the 19th section, to report on any question of difficulty and send it to the Chancellor for decision; but this failed in practice, and very few, if any, such reports were made. The Masters were not likely to suggest such a course when it might be looked upon as an evasion of the responsibility of deciding; and the suitors were not likely to ask the Master to send such reports, when their doing so would directly imply a want of confidence in the Master's ability to decide.

Judging from the comparatively small number of appeals, it would appear that the decisions of the Masters give very general satisfaction. Yet there are, no doubt, many suitors who, though unwilling to appeal against an adverse decision of the Master, would be glad to have the decision of the higher tribunal in the first instance upon questions of difficulty.

I would, therefore, suggest, that in every petition under the 15th section of the Act, either party should be at liberty to take the opinion of the Lord Chancellor upon the construction of any deed or will, &c.; and this might be done by a motion for declaration of rights, grounded on affidavit in like manner as the motion for a decree in a general cause petition.

The first summons before the Master in a 15th section petition, where no discharge has been filed, is sometimes only a matter of form, when the petition is directed to stand as a charge, and certain directions are given which are of a very formal character. I would suggest, that in every case if the respondent disputed the petitioner's right (say, as assignee, as creditor, next of kin, &c., to administer; as partner, as judgment creditor, as annuitant, &c., &c.), or denied any of the facts stated in the petition, that he should be bound to file a discharge thereto; and if none such filed, then that both the petitioner's right to sue, and the facts stated in the petition as alleged, should be taken as admitted; and in order to facilitate this, I think the petitioner should, with the summons and notice, serve a copy of the petition on the respondent.

By obliging the respondent thus to show the defence he intended to rely on (if any) before the coming on of the first summons, the Master would, in every case, be able either to decide the questions on petition and charge, or to know what directions ought to be given by him as to the manner in which the respective parties should proceed to prove their cases.

In the subsequent stages of the case in the office, it would save expense to the suitors and expedite proceedings, if the practice under the 124th General Order of

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1843 was altered, and both parties were at liberty, when directed to file charges, discharges, or surcharges, to file such affidavits in support of same as they might be advised. This would, in many instances, obviate the necessity of what Mr. Jellett, in his statement (p. 83), calls the third hearing of the petition, and would have a like effect of avoiding unnecessary meetings in subsequent stages of the matter.

4. The practice as to interrogatories in Ireland appears preferable to the English practice. The petitioner cannot annex interrogatories to his petition, as the plaintiff has liberty to annex them to his bill in England; but the petitioner puts forward his statement or allegation of fact in the petition, and then by the 6th General Order of May, 1857, this allegation is to be taken as admitted if not denied. If he finds it necessary afterwards to exhibit interrogatories, he must get the leave of the Court.

The practice as to compelling production of documents, under the 31st General Order of July, 1851, and the 4th General Order of November, 1852, in Ireland, is more complete than the practice in England under the 18th and 20th sections of the 15th and 16th of Vic. c. 86; for, in Ireland, any person known to have documents can be made a party to the suit merely by service, under these orders, of a notice of motion to produce them, grounding it on affidavits; whereas, in England, only parties to the cause can be compelled to produce the documents in their possession. And in both countries, any party to the cause, whether they have previously admitted the possession of the documents or not, can be compelled to file an affidavit stating whether they have the documents or not; and a form of affidavit has been settled in England, which it would be useful to adopt in this country.

I would suggest, that all *vivâ voce* examinations should be had in presence of the Court before whom the matter is pending, and, with the aid of a short-hand writer, to take down the evidence for the use of such Court, and especially for the purpose of appeal. When a *vivâ voce* examination is taken before the Examiner of the Court, the witness has so much time to shape, correct, and modify his answers, while they are being taken down at full length, that the whole benefit of a *vivâ voce* examination or cross-examination is generally lost.

As to limiting a time for joining issue and closing the evidence, it appears to me, that the pleadings are closed when the answering affidavit is filed, for the parties are then in this position, that the petition cannot rely on any case not made by the petitioner, nor on any document not put in issue thereby, and the respondent (under the 4th General Order of May, 1857,) cannot rely on any "matter of defence" not stated in his or her answering affidavit.

As to the mode of preparing affidavits, the 8th General Order of May, 1857 (similar to the 8th General Order of January 13th, 1855, English), requires all affidavits to state what facts are within deponent's knowledge, and his means of knowledge, and what he states on belief, and the sources of his belief. The inconvenience of applying this rule to the answering affidavit, which is in the nature of a pleading, has already been mentioned. In England, it is only applied to affidavits by way of evidence; but even applying it only to evidence, a great inconvenience sometimes results from the rule. There is no fee allowed to counsel for preparing affidavits by way of evidence, and the solicitor has to prepare them under the threat of this rule, that all his costs will be disallowed unless the affidavits states all the witness's means of knowledge and sources of belief; and so, for caution, he is obliged to state everything bearing upon the subject. But then it sometimes happens that he falls into an error as great as that which he was avoiding; for the affidavit becomes so voluminous, that at the hearing the opposite party requires the affidavit to be tested by the rules of evidence; and so it is read out paragraph by paragraph, and every paragraph which contains illegal evidence is struck out. I am inclined to think that the ends of justice would be better attained by abolishing this rule.

As to the mode of compelling a witness to attend for cross-examination, the mere service of a notice is sufficient to compel his attendance before the Examiner. But, under the 12th section of the 13th & 14th Vic. c. 89, the service of subpœna is necessary to compel his attendance before the Court. There is no reason why the service of the Order of the Court should not be sufficient; and it would be necessary, perhaps, to provide that his non-attendance should be deemed a contempt. (See 3 & 4 Vic. c. 105, sec. 79; 15 & 16 Vic. c. 86, sec. 40, English.)

5. That in petition matters under the 15th section, the petitioner and respondent should be at liberty at any time to serve a fourteen-day notice of moving before the Lord Chancellor for a declaration of his or her rights, and of the rights of any other party interested therein, under any will or deed then in proof in the matter, provided that the matter upon which such declaration is sought has not been previously brought under the consideration of the Master for his adjudication; and if so, then such notice to be served only with the authority of the Master in the matter. Such motion to be grounded on the proofs in the cause, and such affidavits as the party so moving may, before serving the notice, have filed for that purpose, the other party to have a week to file affidavits in reply.

That petitioner should, with the first summons and notice, serve a copy of the petition on the respondent.

That in case the respondent does not file any discharge to the petition before the time allowed in the first notice of the petition, then the right of the petitioner to sue in the character alleged, and the matters of fact alleged in the petition, shall be taken as admitted.

That all persons directed to file charges or discharges in the Office shall be at liberty, without further leave, to file such affidavits as they may be advised, in support thereof within the times following, that is to say—when the direction is to file a charge or discharge only, the affidavits shall be filed along with same; but when the direction is to file a charge and discharge thereto, or a discharge and surcharge thereto, then such affidavits of both parties shall be filed within ten days after the filing of such discharge to the charge, or after the filing of the surcharge to the discharge.

6. The difference of practice in the Masters' offices that have come under my notice, are, for the most part, in the details of business, and no great inconvenience arises therefrom.

7. With regard to parties, the practice in England and Ireland is almost the same, for, with regard to parties against whom "no *direct relief is sought*," the Bill in England prays that they may be bound on being served with a copy; and in Ireland, though not named in the petition, nor bound until notice is served, under the 32nd General Order of 1851, they may be so served at any subsequent stage of the proceedings, and thenceforth will be parties to the proceedings, and may be bound the same as an original party.

It would be desirable that the respondent should have power at the outset of the proceedings, to raise any legal objection to the relief sought, for want of equity in the petition on the facts stated; this would have the twofold effect: firstly, when the respondent has a question of equity to raise, it would save him the trouble and expense of putting in his evidence, until he has submitted that question to the Court; and, secondly, it would warn the petitioner of the legal defect before all the expense of putting in his evidence had been incurred, and thus enable him either to abandon the petition, or to get leave to amend it in time.

Under the present system, if such legal defect remains unobserved by the petitioner until the hearing, the Court, though seeing upon the facts proved sufficient equity to grant the relief sought, may be compelled either to dismiss the petition, and thus render the whole of the proceedings fruitless, or have to allow the petition to be amended, and allow time for further evidence on both sides, to the great injury of the respondent, great delay of the proceedings, and increase of costs.

8. It would be desirable that the Court of Chancery

Appeal was established upon a basis that would secure the highest judicial ability for the decision of the cases brought before it. It would be easy, without much extra expense to the country, to secure the attendance of the Ex-Chancellors from time to time as members of that Court.

This appears especially needed in appeals from the the Lord Chancellor's Court, where the Lord Chancellor sits as one of the Judges of Appeal, and it would no doubt vastly increase the confidence of the suitors in the Court, if, instead of a Common Law Judge, one or more of the Ex-Chancellors were to sit with the Lord Chancellor and Lord Justice of Appeal, for at present, if the Lord Justice of Appeal should differ in opinion from the Court below, the decision virtually devolves upon the Common Law Judge.

With regard to petitions under the Lands Clauses Consolidation Act, the 80th section has provisions with regard to the costs of paying out of Court money lodged by the Company for the purchase of lands. These petitions sometimes involve very difficult questions of title, and yet they are not required to be signed by counsel, nor is any fee allowed on them for counsel. It was found advisable, by the 7th General Order of 1859, to allow counsel's fee on petitions under the Renewable Leasehold Conversion Act, the Trustee Acts, and the Trustee Relief Act. This rule should also have included the Lands Clauses Act, and other Railway Acts.

9. The practice in Ireland as to appearances, seems preferable to the practice in England. After a respondent has been duly served with the petition, and has declined to appear and name a registered place in Dublin, the petitioner ought, according to the Irish practice, to be relieved from making any further service upon him, as he might then purposely evade service. The entry of an appearance in England by the plaintiff for a defendant does not seem to be of any practical use, as the time for taking a bill, *pro confesso*, and for a defendant demurring, might as well be limited from the time of service of the petition as from the entry of the appearance.

The practice of binding persons who are not parties by service of notice under the 32nd General Order of 1861, in Ireland, appears preferable to the English practice of naming all parties in the bill.

The practice in Ireland as to interrogatories, appears preferable to the English practice.

The practice above suggested with regard to bringing a cause to a hearing, would be preferable to the traversing note, the voluntary answer, and the replication in England.

The practice of taking everything in the petition as confessed if not denied, as in Ireland, is preferable to the English practice of taking everything as denied.

The practice of hearing all interlocutory matters in a suit by motion is preferable to the English practice of requiring a petition.

I must also make this general observation, that the Orders of the Court very much require to be codified and rearranged, inasmuch as it is more than twenty years since this has been done, and the practice has been varied by new Orders on no less than sixty different occasions since then, and the necessary consequence is that in many instances these rules are conflicting.

10 and 11. The observations that occur to me on this matter have already been mentioned.

12. The above suggestions, which I beg leave very respectfully to submit to Her Majesty's Commissioners, are grounded on my general observations of the practice in the Courts, and on my own experience; but I cannot, at present, state the names of particular cases to illustrate the views set forth.

(Signed), R. W. GAMBLE.

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5. ANSWERS of SOCIETIES* of ATTORNEYS and SOLICITORS in IRELAND to CIRCULAR as to EQUITY PRACTICE and PROCEDURE.

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1. ANSWERS of the COUNCIL of the INCORPORATED SOCIETY of the ATTORNEYS and SOLICITORS of IRELAND to the QUERIES of the ENGLISH and IRISH COURTS of COMMON LAW and CHANCERY COMMISSION in relation to the working of the present system of EQUITY PRACTICE and PROCEDURE in IRELAND.

1. In its general bearings the Irish Chancery Regulation Act of 1850, has worked well for the public. There has been a great saving of expense, particularly in suits for the administration of real estates. It is true, that the nature and magnitude of such suits have undergone a complete change by the operation of the Incumbered and Landed Estates Courts, but still they are at times necessary, and can now be worked with an ease, facility, and moderation of expense, unknown prior to 1850.

The same observations are applicable, although in a lesser degree, to suits of every kind. The pleadings have been shortened, formalities abolished, facilities have been given for adding and striking out parties, and for reviving suits, which ensure accuracy and despatch.

2. We would not suggest any alteration in the cause petition. We think the answering affidavit should set forth the defendant's entire case, just as the petition purports to set forth the entire case of the petitioner; and we think subsequent affidavits by petitioners or respondents should be permitted—that is to say, an answering affidavit by petitioner, and a rejoinder by respondent; and that after the last of such affidavits shall have been filed, that the cause shall be considered at issue, unless the Court shall otherwise direct, each party to be permitted a sufficient time to give such evidence by affidavit or otherwise, in support of their respective cases, so made as they shall be advised.

3. With some modifications, to which we will allude in our observations in the printed statement of Mr. Jellett, we approve of the working of the jurisdiction of the Masters under the 15th section of the Chancery Regulation Act.

4. We do not approve of the present system of taking evidence. An answering affidavit is filed in four weeks after service of the notice of filing petition, after which, petitioner has three weeks to file his further affidavits in support of the petition, and respondent has then fourteen days to file further affidavits in support of his case. Practically, the time for filing these further affidavits on both sides is unlimited, up to the hearing, as leave is usually given by the Lord Chancellor, but, we think, that after the answer and rejoinder have been filed, a certain time should be allowed to both parties for the filing of affidavits as evidence. These affidavits should be closed against both litigants until publication had passed; and after that period, unless under very special circumstances, neither party should be allowed to give any evidence whatever. The suitors should be held very strictly to this.

At present, it is impossible for a solicitor to know when to have his proofs directed by counsel—affidavit is heaped on affidavit, each in answer to the other.

The Masters in their system of passing publication, adhere to a more strict rule than does the Lord Chancellor; but, in every case, the affidavits are open to the opposite party at once, on being filed, which we think most objectionable.

The affidavits of each should be closed against the

* In addition to the bodies who have answered, the Circular was also sent to the Dublin Law Club and the Cork Law Society.

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other until the passing of publication, with liberty however upon due notice being given, for each to cross-examine the witnesses of the other in open Court, or before the Master or Examiner, at the election of the party requiring such cross-examination.

6. The Masters differ somewhat in their practice, but there is a general order that they shall meet once a year to settle it; we believe they do meet but the want of uniformity in practice remains the same.

See Mr. Jellett's Statement, p. 81. We think the practice should be uniform, and that the Masters should prepare and adhere to a set of general rules.

7. This question will be answered in our observations on the points of difference.

8. We think the most important change necessary is that with respect to the taking of evidence; other matters we will observe upon in noting the differences hereafter.

9. We must leave our brethren in England to answer this.

10, 11, 12. As to these numbers, see our marginal observations on the annexed printed statement of Messrs. Barber and Jellett.

We would desire in conclusion, to bring under the notice of the Commissioners the very onerous and heavy fees and stamp duties in the nature of Chancery funds, payable by suitors of the Court, in the progress of suits.

1st. In consequence of the institution of suits by petition instead of by bill, all affidavits require a 2*s.* 6*d.* stamp, as in matters, instead of 10*d.* as in a cause.

2nd. We object to being obliged when filing affidavits in the Affidavit Office, to take out attested copy of such affidavit, for which 10*d.* Irish, per folio is paid. And we submit, that as in the Courts of Law, plain copies of all affidavits certified by the solicitor filing them, to be true copies, should be sufficient. And that when used as grounding an application to the Court, the solicitor serving notice of such application should furnish a copy to his opponent.

We think it is highly desirable that in cases where accounts are taken in Chancery, whether in foreclosure or administration suits of incumbrances affecting lands, same should be taken by claim, searches, and schedules of incumbrances, as in the Landed Estates Court.

Although it does not strictly come within the scope of the queries submitted to us, in reference to proceedings in the English and Irish Courts of Chancery, respectively, we think it a fitting opportunity to bring under the notice of the members of the Commission, that on the reform of the English Court, a scale of fees for the solicitors was framed on the principle of remunerating them in proportion to the skill and responsibility, and to the value of the matter in dispute, and not, as formerly, according to the length of documents, and that we consider the same or a similar scale of fees should be allowed in the Irish Court.

See General Orders of the Court of Chancery in England, bearing date 30th January, 1857.

By Order,

(Signed), EDWARD ILES, Secretary.

Solicitors' Buildings, Four Courts,
Dublin, 19th December, 1862.

MARGINAL OBSERVATIONS above referred to.

Plea.

With respect to the passage on the subject of pleas (Mr. Barber's Statement, p. 59, *et seq.*), we beg to observe that we do not see why there should be a difference between plea, answer, and demurrer. We would let there be an answer alone whatever its nature.

Interrogatories.

On the subject of interrogatories (Mr. Barber's Statement, p. 59), we think the Irish practice of filing them only by special leave of the Court sufficient.

Exceptions.

With respect to exceptions (Mr. Barber's Statement, p. 60), we believe there are no exceptions to answers with us now, but we think it was a good practice.

Procedure.

Respecting the procedure in a general cause petition (Mr. Jellett's Statement, p. 79, *et seq.*), the important difference between the English and Irish practice seems to be that the Judge before whom the suit is commenced brings it to a conclusion. This we think a matter of vast importance, as the history of the Incumbered Estates Court abundantly proves. We think that the business before the Chief Clerk should be mere matter of vouching and figures. It is very probable that Masters were formerly Chief Clerks to the Chancellor, to whom he referred such matters, and that by degrees the references to them became more important, and if care be not taken it might again come to be the same as between Vice-Chancellor and Chief Clerk.

Exceptions from Masters' Jurisdiction.

With respect to the exceptions from the Masters' jurisdiction under the 15th sec., C. R. A., 1850 (Mr. Jellett's Statement, p. 81), we think the Masters should have full power to make the orders.

Diversity of Practice in Masters' Offices.

Respecting the diversity of practice alleged to exist in the Masters' offices (Mr. Jellett's Statement, p. 81), we beg to observe that this statement is strictly correct, and the practice, or rather want of uniformity in practice, leads to very great inconvenience to the profession and expense to suitors.

Moving Petition for Summary Order under 15th Section.

Respecting 15th section petitions (Mr. Jellett's Statement, p. 82), so long as the 15th section jurisdiction is retained, we think it unnecessary to have the petition moved before the Chancellor. A simple reference without motion should be made to each Master in rotation.

Proceeding after Order of Reference.

Respecting the proceeding after order of reference (Mr. Jellett's Statement, p. 82), we think the practice very unsatisfactory, and that the time given to a respondent to make his case is quite too short.

Notice of Petition, Appearance, Answer.

As to notice of the petition and appearance and answer (Mr. Jellett's Statement, p. 82), we think the party should have notice of the lodging of the petition in the Master's office, to which he should enter an appearance, and that he should then have a month for filing his answer, as in general cause petitions.

Service of Summons and Notices.

Respecting the service of the summons and notices at present (Mr. Jellett's Statement, p. 82), we should observe that the same practice is not followed in all the Masters' offices.

We are of opinion that the Masters should have power to direct service out of the jurisdiction.

Second hearing of 15th Section Petitions.

With respect to the second hearing of 15th section petitions (Mr. Jellett's Statement, p. 82), the practice in the Master's offices, should be assimilated.

Time for making up Final Order.

As to limiting the time for obtaining the final order (Mr. Jellett's Statement, pp. 82–3), we consider it unnecessary and vexatious. There is sufficient power in the Master and the parties to insure expedition.

Administration Suits, diversity of Practice.

In administration suits (Mr. Jellett's Statement, p. 83), the diversity of practice in the Master's offices is most inconvenient, otherwise we consider the practice in these suits satisfactory.

Suits for Foreclosure and Sale.

Respecting suits for foreclosure and sale (Mr. Jellett's Statement, p. 84), we believe there can be no future sales of Estates in the Court of Chancery, in Ireland. We think the Irish practice of taking the accounts preferable to the English.

Procedure by Special Case.

Respecting petitions stating a special case under the 11th section of the Chancery Regulation Act of 1850 (Mr. Jellett's Statement, p. 84), we see no cause for recommending change.

Partition Suits.

As to costs in partition suits (Mr. Jellett's Statement, pp. 84–5), we think the present practice both in England and Ireland unjust. At present the plaintiff pays all his own costs up to and including the first hearing, and we see no reason why the practice in the Landed Estates Court of dividing all the costs rateably amongst the parties according to their shares should not be followed.

Summary Application by Motion.—Affidavits.—Service of Notices, &c.

With respect to motions upon notice in interlocutory and other summary applications in suits (Mr. Jellett's Statement, pp. 85–6), we think there should be three clear days between the service of the notice and the day on which it may be moved. Also, that copies of affidavits in support of the notice should be furnished with it as in the Law Courts. We think also that with reference to the services of notices, summonses, and orders, the Landed Estates Court practice of transmission through the post-office, by the Officer of the Court, should be adopted.

Constitution of Court of Appeal.

Respecting the Court of Appeal in Chancery in Ireland (Mr. Jellett's Statement, p. 88), we would suggest that three judges should in all cases form the Court of Appeal.

Executors accounting in Minor Matters.

With respect to the practice in Ireland in the case of Executors accounting in minor matters (Mr. Jellett's Statement, p. 89), we consider if an Executor comes in *bona fide* and accounts, he should be protected (on giving proper notice to all parties) from further liability or responsibility.

As to Printing and verifying Bill or Cause Petition.

As to printing the bill or cause petition, and verifying it (Summary of Differences, p. 90), we think that it need not be printed; it is unnecessary to have so many copies as to render that desirable. We think it should be verified.

Parties.

With respect to parties (Summary of Differences, p. 90), we think the Irish practice, by which persons against whom no account or other direct relief is sought are not necessary parties to the suit in the first instance, is sufficient.

Service.

For effecting service (Summary of Differences, p. 90), we prefer the Irish practice of notice. The defendant can take out the copy bill if he please.

Service out of Jurisdiction.

We think that the Court should have power in all cases to sanction service out of the jurisdiction as in England.

Appearance.

With respect to entering an appearance (Summary of Differences, p. 90), we think if a defendant fail to appear he should not be allowed to file affidavits in answer. We see no necessity for the P. A., as in England. If a respondent does not appear he should not be allowed to take any proceedings in the matter without leave of the Court on notice to petitioner.

Guardian ad litem.

In the proceedings to appoint a guardian *ad litem* (Summary of Differences, p. 90), there is practically little difference between the two countries. We see no reason for a change in the Irish practice.

Demurrers and Pleas.

With respect to demurrers and pleas in England (Summary of Differences, p. 90), we prefer the Irish practice of the answering affidavit.

Compulsory Answer.

With respect to interrogatories (Summary of Differences, p. 90), we think the Irish practice of filing them only by special leave of the Court sufficient.

Voluntary Answers.

On the subject of voluntary answers (Summary of Differences, p. 91), we think the Irish practice sufficient.

Production of Documents.

With respect to enforcing the production of documents (Summary of Differences, p. 91), we prefer the Irish practice.

Cross Interrogatories.

On the subject of cross interrogatories (Summary of Differences, p. 91), we prefer the Irish practice, which requires an order of the Court to be obtained on special motion before such interrogatories can be filed.

Answer should be a Pleading.

As to verifying the answer (Summary of Differences, p. 91), we think a defendant should verify each part of his answer, *in extenso*, as is the practice in Ireland; but at the same time there is no reason why it should not be a pleading.

Effect of not Answering.

So far as relates to the effect of not answering (Summary of Differences, p. 91), we think the Irish practice more convenient than the English.

Demurring ore tenus.

But we think that the respondent should not be allowed to demur, *ore tenus*, at the hearing.

Amendment of Bill.

The English practice, with respect to the amendment of the bill (Summary of Differences, p. 91), is that which prevailed in Ireland under the old system of bill and answer. We think that which now exists in Ireland is the better course.

Closing the Pleadings.

With respect to closing the pleadings (Summary of Differences, p. 91), we think they should be formally closed and issue joined.

Admissions.

With respect to the costs of proving documents in the absence of notice to admit (Summary of Differences, p. 58), we think the Taxing Master should have power to allow the costs when the omission to give the notice is, in the opinion of the Taxing Master, a saving of expense.

Making up Final Orders.

The practice of fixing a time for making up final orders (Summary of Differences, p. 92), we think unnecessary and vexatious. It has not been found to work well in practice, and sufficient power is vested in the Master and the parties to insure expedition.

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Decree without Bill filed.

The English practice by which in certain cases a decree may be obtained upon summons duly served without a bill being filed (Summary of Differences, p. 92), we consider too summary. We prefer the Irish practice.

Proceedings respecting Guardianship and Maintenance of Infants.

With respect to proceedings in matters relating to guardianship and maintenance of infants (Summary of Differences, p. 92), we think the present Irish practice satisfactory, subject to a reduction of stamp duty and office fees.

Foreclosure Suits and Suits by Specific Incumbrancers.

With respect to determining who are necessary parties in foreclosure suits and suits by specific incumbrancers (Summary of Differences, p. 93), we think the Irish practice sufficient. It does substantial justice without doing injustice to any one.

Service of Notices.

With respect to the service of notices (Summary of Differences, p. 93), we prefer the Irish practice, subject to a reduction of the fee for service. Notices should be transmitted through the post office by the Court Clerk, as in the Landed Estates Court.

Affidavits.

In affidavits we think it desirable to adopt the first person. (Summary of Differences, p. 93).

Revivor.

With respect to the revivor of suits (Summary Differences, p. 93), we think the Irish practice sufficie

Enforcing Decrees.

For the enforcement of decrees (Summary of Diff ences, p. 94), we see no use for a Serjeant-at-Arms : writ, or order of the Court to be directed to a sheri should be sufficient.

Appeals and Rehearings.

With respect to appeals (Summary of Difference p. 94), we think the time for appealing from the Maste orders is too short (only fourteen days), whereas fro other orders the time is three months.

The time should, we think, be extended to one mont and such time to count from the day on which Mast signs order, and notice of such signing should be giv to all parties.

Otherwise we do not think the Irish practice, wi respect to appeals and rehearings, requires change.

Summary Statutory Jurisdiction.

With respect to summary statutory jurisdiction (Su mary of Differences, p. 94), we do not think the Iri practice requires change.

Committee of the Northern Law Club.

ANSWERS of the COMMITTEE of the "NORTHERN LAW CLUB" to the QUESTIONS of the ENGLISH and IRIS COURTS of COMMON LAW and CHANCERY COMMISSION respecting EQUITY PRACTICE and PROCEDURE.

1. That the system of proceeding by cause petition and affidavits, in the Courts of the Lord Chancellor and the Master of the Rolls in Ireland, as effected by the Irish Chancery Regulation Act of 1850, is a vast improvement upon the previous system, although capable of being still further modified with advantage.

2. That the system of proceeding by numerous statements in the form of affidavits, and counter-affidavits, might be much simplified; and the issues in a cause more easily and speedily arrived at, by assimilating to some extent the Chancery practice to that of the Common Law, namely:—

(*a.*) By requiring the petitioner to place his entire case before the Court in his petition, and the respondent to file an answer setting out the defence upon which he relies—both parties to be bound by the statements so made, without the necessity of verifying them by affidavit before filing them—by which means the issues in a cause would be joined immediately.

(*b.*) By letting the parties proceed to trial and taking such oral testimony as each may be advised to produce.

3. That the jurisdiction of the Masters under the 15th section, is most salutary and efficacious, and the working of it satisfactory.

4. That the testimony of witnesses should as far as possible be received in Court orally—evidence by affidavit to be the exception and not the rule as heretofore; and that where the examination is conducted under a Commission it should not be limited to the scope of interrogatories, but power should be given for the reception of material evidence although it did not come within the limits of the interrogatories.

6. The different Masters pursue a different course in the minor details of the practice in their offices, but this is deemed to be attended with advantage rather than disadvantage.

8. (*a.*) That all sums payable out of Court amounting to less than £100, should be paid to the party entitled thereto upon his receipt simply, as is the practice of t Landed Estates Court, without involving such party the expense of a power of attorney.

(*b.*) That Usher's poundage is most unjust, and u reasonable, and should be discontinued.

(*c.*) That the fees charged upon attested copies documents, and upon summonses issued in the Maste offices, are, in small suits, heavy and oppressive, a interfere with the due administration of justice, a they might with advantage be reduced or imposed u a different system.

(*d.*) That the practice of refusing to tax a petitione bill of costs until the costs of the respondent in the sa cause are lodged, or to tax such petitioner's costs in absence of the respondent's solicitor, as reported b member of this Committee to exist in the office of of the Taxing Masters in Chancery, should be modi or discontinued.

(*e.*) That costs taxed in any matter in Chancery sho be paid to the solicitor entitled thereto, instead of t party in the suit, as is the existing practice, ther assimilating the practice of the Court in this respec that of the Landed Estates Court.

(*f.*) That in order to meet the complaints, whe well founded or otherwise, by solicitors, of the d which occurs in the taxation of costs, the Taxing M ters should make periodical returns to the Chance showing the number of bills of costs lodged for ta tion, the names of the parties interested, the amo claimed, the nature of the costs, the date of lodgm and the dates of taxing and certifying same respectiv

Signed on behalf of the Committee
of the Northern Law Club,

HUGH HYNDMAN, Secretary

9, Donegall-place, Belfast.

APPENDIX C.—ACCOUNTS IN COURT OF CHANCERY IN IRELAND, with UNCLAIMED DIVIDENDS.

RETURN of DIGBY P. STARKEY, Esq., Accountant-General of the Court of Chancery in Ireland, showing—(1) The Number of Accounts at last Balance (1861) of the Accountant-General's Books to the credit of any Cause or Matter, the Dividends or Cash to the credit of which has not been dealt with for fifteen years prior to such Balance-Sheet; and (2) The total Amount of Stock and Cash to the credit of all such Accounts.

1. Number of Accounts, 810.

2. The total amount of Stock and Cash to the credit of all such Accounts, viz.:—

	Cash.			Government 3 per Cent. Consols.			Government New 3 per Cents.		
	£	s.	d.	£	s.	d.	£	s.	d.
Chancery Accounts, . .	65,869	19	6¼	627	5	3	39,599	5	3
Late Equity Exchequer, . .	8,762	4	10¾	—			2,971	16	11
Totals, . . .	74,632	4	5	627	5	3	42,571	2	2

(Although the above amount of Cash appears as the balance due to the Suitors in the Bank of Ireland, the available amount is but small; the sums drawn from the General Fund, under various Acts of Parliament, for public purposes having reduced the balance in August last to about £8,000.)

(Signed), DIGBY P. STARKEY,
Accountant-General.

APPENDIX D.—COMMISSIONERS of AFFIDAVITS, COURT of CHANCERY, IRELAND.

COPY of LETTER from MAZIERE J. BRADY, Esq., CLERK of AFFIDAVITS.

Chancery Affidavit Office, Dublin,
November 22nd, 1862.

SIR,—I shall feel obliged by your bringing under the notice of the Commissioners the necessity of Legislation as regards the appointment of Commissioners to administer oaths in Chancery proceedings.

The jurisdiction of the Court is conferred by the Act 55 Geo. III., c. 157. There is no provision made for appointments in the Isle of Man, for instance; I have known several instances of great inconvenience to parties in consequence. There is no power to appoint in the Channel Islands either. The English Acts of Parliament to which I would beg to call your attention, as bearing on the subject, are 15 and 16 Vict., cap. 86, section 22; 16 and 17 Vict., cap. 78; 18 and 19 Vict., cap. 42.

If the provisions of these Acts have been found to work well in England, an Act of Parliament conferring the same jurisdiction on the Irish Court of Chancery would be very desirable; but in my opinion it would be better not to mix up this subject with other matters, but to confine any Act of Parliament that may be deemed necessary to it alone.

I have the honour to be, sir,

Your obedient servant,

(Signed), M. J. BRADY.

W. N. Hancock, Esq.,
Secretary to the Commissioners.

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1863
Vol. XI
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REPORT

OF

THE COMMISSIONERS

APPOINTED TO INQUIRE AS TO

HE STATE OF THE REGISTERS OF LAND RIGHTS

IN THE

COUNTIES AND BURGHS OF SCOTLAND.

WITH

APPENDIX OF DOCUMENTS, ETC.

Presented to both Houses of Parliament by Command of Her Majesty.

EDINBURGH:
PRINTED BY MURRAY AND GIBB,
FOR HER MAJESTY'S STATIONERY OFFICE.

1863.

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TO

THE RIGHT HONOURABLE SIR GEORGE GREY, BART.,

SECRETARY OF STATE.

SIR,

By Letters dated 18th and 24th April 1861, we were instructed by Her Majesty's ernment to inquire and report as to 'the state of the Registers of Land Rights in the Counties and ghs of Scotland; and whether it is desirable that these should be transferred to Edinburgh; and in t way, and under what conditions, that object, if desirable, can be best effected.' Subsequently, Memorandum dated 17th June 1861, the Lord Advocate pointed out several special matters which vished to be embraced in our investigations. Having now completed our inquiries, we beg humbly ubmit the following — Commission.

REPORT.

In order to render our Report intelligible to those unacquainted with the Scottish Registers of Land nts, we deem it necessary to offer some preliminary explanations as to their general system, and as ertain technical details. — Preliminary Explanations.

Property in Land in Scotland stands on a very secure footing. A registered title, *ex facie* formal absolute, presumes an indefeasible right, and if a search in the Registers of Land Rights, for a od of forty years backwards, discloses nothing affecting the right of ownership, and no burden or inbrance, a stranger is in perfect safety to deal with the holder of such absolute registered title, as ng unlimited power over the Estate. It is obvious, therefore, that the stability of Land Rights, the marketable value of Land in Scotland, depend greatly on the degree of perfection to which system of registration has been, or may still be, brought.

The principal Registers of Scotland have been established for several centuries. They are generally ed under the following heads: (1) Registers for Publication; (2) Registers for Preservation; and Registers for Execution or the enforcement of obligations. The present inquiry comprehends only e Registers which fall under the first of these heads. It has reference, however, to the other isters, so far as these indirectly affect land rights. — Classification of Registers.

In the early part of the sixteenth century, various Acts were passed by the Parliament of Scotland, ing provision for the gradual establishment of a public Register of Land Rights. But these isions were imperfect, and never came into general observance. It was not until the year 1617 an Act was passed, establishing, on a broad basis, our present system of registration for publin. That Act was passed on the following preamble:—'Our Soveraigne Lord, considering the t hurt sustained by his Majesties Lieges by the fraudulent dealing of parties, who have annallzied lands, and received great summes of money therefore, yet by their unjust concealing of some ite right formerly made by them, render the subsequent alienation done for great sums of money, gether unprofitable; which cannot be avoided unlesse the saids private rights be made publick and nt to His Highnes Lieges: For remedy thereof, and of many inconveniences which may ensue eupon,' it was enacted, 'That there shall be ane publick Register, in the which all Reversions, resses, Bands, and writs for making of Reversions or Regresses, Assignations thereto, Discharges e same, Renunciations of Wadsets, and grants of Redemption, and siklike all instruments of Seazing be Registrat within threescore days after the date of the same.' It was also enacted that the act (or authenticated office copy) taken from the Register should 'make faith in all cases except e the writs so registrated are offered to be improven,' *i.e.*, set aside as forged or false. And er, it was provided that, unless duly registered in manner previously mentioned, the writs should ke no faith in judgment by way of action or exception in prejudice of a third party.' — How they were established. — 1617, c. 16.

This Act proceeds to establish a 'General Register' to be kept in Edinburgh, under the superinence of the Lord Clerk Register; and 'Particular Registers' to be kept in and for certain districts ughout Scotland, which it names—and to which only three new districts have since been added. points all writs affecting land (except within royal burghs) to be registered either in the Particular ster of the district within which the land is situated, or, in the option of the party, in the General ster in Edinburgh. By a subsequent Act the system of registration was extended to royal burghs, he Burgh Registers were not, like the others, placed under the superintendence of the Lord Clerk ster. — 1681, c. 11.

This system of registration of land rights may be said to have been completed by three other Acts e Scottish Parliament, two passed in 1693, and one passed in 1696. By these Acts it was provided hat all writs requiring sasine should, in competition with each other, be preferred according to the and priority of registration of the sasine, 'without being clad with possession;' (2) that to enable — 1693, c. 13, and c. 14. 1696, c. 18.

'purchasers and creditors to know with whom they might safely contract,' 'Minute Books' of all presented for registration should be kept in the several Registers, expressing the day and hour and the names and designations of the persons by whom, the writs were presented; that the should be immediately signed by the presenter of the writ, and also by the keeper, and should be to all the lieges gratis; and that the writs should be registered by the keeper exactly in the order Minute Book, under pain of deprivation and damages; and (3) that no sasine or other writ appo to be registered should be valid against any one but the granters and their heirs, unless registered.

By other early Acts of the Scottish Parliament, to which it is unnecessary specially to refer, Regi both General and Particular, were established, for the publication of inhibitions, interdictions, adjudications—judicial writs which may be sued out by any creditor for the purpose of attachi impounding the land of his debtor, and which are known technically in Scotland under the ge name of 'real diligence.'

Objects attained by the Registers.

By the combined operation of these Registers for publication, which do credit to the enlight legislation of the seventeenth century, three important objects were attained: (1) a full transcript of writ was engrossed in the Register, so that a probative extract, or authenticated office copy, mig issued by the Registrar at any time on demand; (2) the preference among writs affecting lan made to depend upon the priority of registration; and (3) by means of the Register being th open to the public, it became possible at any time to ascertain, by searching it, how far any parti property did or did not belong to the party claiming it, and was or was not subject to burdens, or i course of being attached by real diligence.

Various co-existent rights in same land.

The importance of these provisions for the security of persons dealing in land in Scotland w more apparent, when it is explained that (without reference to joint or *pro indiviso* rights, or real tudes) the following parties may each, under our feudal system, have a real right or interest, at the time, in the same piece of land. Thus, *first* (and irrespective of the circumstance that all land in land is held under the Crown, as the prime feudal superior), the immediate or subject superior, land has been given off by him so as to be held of himself, has certain reserved interests in the la a more or less substantial kind. He has frequently considerable annual duties payable to him out as well as casual payments on the renewal of the investiture of the vassal. *Second*, The vassal is i actual possession of the land, and draws the rents. *Third*, The minerals in the lands often constit separate estate, vested in a third party. All these rights are absolute and perpetual. *Fourth*, The —that is to say, the property in the land, whether of the superior, vassal, or mineral owner—m subject to a mortgage debt or reversionary interest. *Fifth*, The land may be, in like manner, su to a ground-annual or perpetual ground-rent, created in favour of a third party. All these five r are, or may be, feudalized; but unless they appear on the Register of Sasines they are not valid agains one but the granter of the right. *Lastly*, Land or minerals may be subject to a lease for a period of amounting practically to perpetuity. This last, however, is not a feudal right, and was not appointe

20 and 21 Vict., c. 26.

the early Scottish statutes to be entered in the Register; but by a recent Act of the British Parlia all leases having an endurance of not less than thirty-one years, and comprehending (except in the of minerals) not more than fifty acres of land, may be entered in the Register of Sasines; and h been once so entered, such leases, and all subsequent transfers thereof, are capable of being dealt as respects securities or mortgages, in the same way as proper feudal rights.

Meaning of terms Sasine and Register of Sasines.

Every feudal title must be based on a charter, feu-contract, or other deed, containing a dispo clause, and (except in certain cases which it is unnecessary to name) a warrant by the granter au izing infeftment or sasine (*i.e.*, symbolical delivery), of the Heritage to be given to the grantee. deed, technically known as 'the warrant,' does not require, and (until recently) did not admit of tration for the purpose of publication. On the warrant, according to our former practice, infeft or sasine, required to be given, and a Notarial Instrument was prepared in evidence of the fact. Instrument, called for the sake of brevity, 'the Sasine,' was the part of the title which entere Register. Until Sasine was passed, the right of the grantee was merely personal and unfeudalized complete progress or series of titles, therefore, consisted of the Warrants and Sasines thereon dur period of at least forty years. But by recent Acts of Parliament, the necessity for an Instrume Sasine has been superseded, and the registration of the warrant in the Register of Sasines for pul tion is declared equivalent to the registration of an Instrument of Sasine. The Register now co principally of Warrants, but it is still usually called 'The Register of Sasines.'

With these preliminary observations, we shall proceed to explain in detail the existing syste registration, as matured partly by legislation and partly by usage; and we shall afterwards notic imperfections which, in the progress of time, have become apparent in it, notwithstanding the fore which characterized its original establishment.

Existing Registers of Land Rights.

The Registers of Scotland, affecting land, are the following:—

(1.) The *General* Register of Sasines, Reversions, etc., and relative Minute Books, compiled b keeper of that Register from day to day; the volumes of both, as they are filled up, being dep permanently in the General Register House in Edinburgh. This Register is open to writs affe Lands in any part of Scotland.

(2.) The *Particular* Registers of Sasines, Reversions, etc., and relative Minute Books, whic compiled in the various 'districts' referred to in the Act 1617, and transmitted from time to tim each successive volume is filled up, to the General Register House in Edinburgh, where the whol permanently deposited. In these Registers, such writs only as affect Lands within the district c recorded.

(3.) The *General* Register and Minute Book of Inhibitions and Interdictions, which are con in Edinburgh, and deposited permanently in the General Register House there.

4.) The *Particular* Registers and Minute Books of Inhibitions and Interdictions, which are in like
er compiled in each county (not districts) and in some instances at more places than one in the
y, and which are transmitted from time to time, as the volumes are filled up, to the General
ter House in Edinburgh, where the whole are permanently deposited.
5.) The Register of Adjudications, which is compiled and remains permanently in the General
ter House in Edinburgh.
6.) The Register of Interruptions of Prescription, which is also compiled and remains permanently
General Register House in Edinburgh.
The volumes of each of these Registers are transmitted by the Keepers or Framers of the Register,
office of the Deputy-Keeper of the Records, or, as he is more correctly termed, 'The Lord Clerk
ter's Deputy for keeping the Records.'
Besides the Registers now enumerated, three other Registers affecting land are kept in Edinburgh,
each volume is filled up, it is transmitted to and remains in the custody of the Deputy Keeper
Records, with the exception of No. 7, which remains permanently in the office of Chancery; viz.,—
7.) The Register of Retours of Services, or, as it is now called, the 'Register of Services' (a
e being a writ required in the completion of the title of an heir to his ancestor).
8.) The Register of Crown Charters (a Crown Charter being the writ which constitutes and renews
vestiture of a Crown vassal).
9.) The Register of Entails.
There is also compiled, and permanently retained in every royal burgh (with a few exceptions)
10.) The Burgh Registers of Sasines, intended for the registration of sasines affecting properties
ed within burgh, and held by *burgage* tenure.

We understand that the Register of Services (No. 7), of Crown Charters (No. 8), and of Entails
9), do not require to be specially reported on by us, though we shall venture in the sequel to offer
gestion in regard to the Register of Entails.

The Burgh Registers (No. 10) are of a peculiar and exceptional character, and will be treated of
ately from the others.

There is, further, a Record which, although it cannot be classed among the Registers of Land
s, requires to be noticed by us—namely, the Record which is kept in the Signet Office of writs
g the Signet. The circumstances under which this Record affects our present inquiry will appear
e sequel. In the meantime, our observations and recommendations will be understood to have
nce only to the six Registers first referred to.

Uses of each of the Principal Registers.

Of these six Registers, the most important are the General and the Particular Registers of Sasines.
e or other of these are to be found recorded, at full length, the Sasines of all the heritable or real
rty in Scotland for the last two centuries; with the exception, as already mentioned, of pro-
in royal burghs. The Register of Sasines accordingly shows to any one making a search in it,
successive investiture of a new proprietor in lands held by feudal tenure, and every burden or
age created.
The Register of Inhibitions and Interdictions contains the record of a class of judicial writs, the
of which is to restrain a proprietor from disposing of his real property, or charging it with debt to
rejudice of his creditor. After letters of inhibition against a proprietor have passed the Signet,
een served on him (if afterwards duly registered), every subsequent conveyance of his property,
arge upon it, may be challenged by the inhibitor; and unless his debt is paid, the conveyance or
e may be set aside. Interdiction forms a restraint on the alienation of property by a person of
le or improvident character.
By a search, therefore, in the General and Particular Registers of Inhibitions and Interdictions,
rchaser or a lender may, except in the special case to be hereafter noticed, ascertain whether a
rty is affected by either of these diligences.
While the effect of Inhibition and Interdiction is to throw an impediment in the way of conveying
perty, or burdening it with debt, an action of Adjudication is a measure to enforce the judicial
fer of real property from its proprietor to the party instituting the action. It may be used either
force fulfilment of some previous obligation to convey the lands, or to attach them for payment of
t due by the proprietor. The decree in this action does not of itself complete the creditor's title to
nds, but is a step towards it; and in the meantime it renders of no effect any conveyance or herit-
security granted by the proprietor after the date of the execution of the summons in the action.
bbreviate or abridgment of the decree must be recorded within sixty days in the Register of
lications; and a search in that Register will, after the expiration of these sixty days, convey, to a
aser or lender, information whether or not the property is in course of being attached and trans-
l by adjudication.
A title to land, although in some respects informal, may become valid through prescription, or
errupted possession on such title for a continuous period of forty years. But a party having interest
adopt measures to *interrupt*, as it is termed, the operation of prescription, and may thus preserve
ght to challenge the defective title, notwithstanding the expiry of the forty years. The Register of
ruptions of Prescription is intended to disclose whether any measures have been adopted thus to
d the period during which a title may be challenged.

The Lord Clerk Register, and his duties.

The Registers of Scotland are, and have been from a remote period committed to the charge of
ord Clerk Register, or, as he is styled in the earlier statutes, the Clerk of the Register. He is
f the Officers of State, and up to the union of the kingdoms had, in virtue of his office, a seat and
in the Scottish Parliament.
A very interesting printed memorial prepared in 1788 by the late Mr William Robertson, then
ty Keeper of the Records, describes the duties and functions of this high Officer of the Crown. He

was the superintendent and legal custodier of all the Registers, with very large powers. He was presiding Clerk of the Privy Council, of the Court of Session and Court of Exchequer, and of every Commission issued by the Crown or Parliament—the records of all which were in his charge and keeping; and since the Union the election of Representative Peers of Scotland takes place under his presidency as returning officer, or that of two of the principal Clerks of Session nominated by him to officiate in his absence.

The Registers of Hornings and Inhibitions, both General and Particular, and the Register of Adjudications, have from the first been within his department. By the Act 1617, the Registers of Sasines were declared to appertain and belong to his office, and to be incorporated therewith; and the volumes of the Sasine Registers were, by that Act, ordered to be 'reported' to him, to remain with him and his deputies, patent to the public. And, by virtue of the Act 57 Geo. III., cap. 64, he is vested, *ex officio*, with the office of Keeper of the Signet.

The patronage of the Lord Clerk Register was originally very extensive, and included right to appoint all the deputies and clerks, not only in the Court of Session and Register House, but in all the various departments throughout the country under his superintendence; but it is believed that the patronage of the two offices of Lord Clerk Register and Keeper of the Signet is now limited to the appointment of the Deputy Clerk Register, the Deputy Keeper of the Signet and the officers under him in the Signet office, the Keeper and two Assistant Keepers of the Register of Deeds, and some subordinate officers—the appointment of all the other officials engaged in the business of registration, whether in Edinburgh or in the country, being vested in the Crown. The salary of the office of Lord Clerk Register has been lately abolished by Act of Parliament.

Duties of the Deputy Clerk Register.

The Deputy Clerk Register is, under the authority of a royal warrant of 1806, instituting the office, appointed by the Lord Clerk Register, who commits to him a general power to exercise superintendence and control over all other deputies, keepers, and officers within his office and department and to carry into effect all the powers and authority which are by law vested in the Clerk Register in regard to all classes of the Public Records. To this officer is committed the immediate control of the internal arrangements of the General Register House, the duty of marking the blank Record volumes in which the writs presented for registration are to be engrossed, the issuing of instructions for the proper formation and transmission of the several Registers, and the control of Sheriff and Burgh Clerks in the formation of Registers not by law transmissible to the Lord Clerk Register's department.

Duties of the Deputy Keeper of the Records.

The Deputy Keeper of the Records is also a deputy of the Lord Clerk Register. He is charged with the duty of keeping the Public Records in the General Register House and the warrants thereof and his duties comprise the immediate custody and arrangement of all the Registers permanently deposited in the General Register House, the superintendence of all persons, official and non-official, engaged in searching or examining these Registers, the collection of the fees arising within the department, and the power of issuing extracts or authenticated office copies of all deeds or documents in his custody. The services of this officer are also available in other matters, including the issuing to the several Keepers blank Record volumes, after these have been marked by the Deputy Clerk Register and the examination of the several volumes, with their Minute Books, when sent into the department in a completed state.

Marking and issuing blank volumes of the Registers and Minute Books.

The system referred to above of marking the blank volumes, before they are issued, is one of so much practical value, in affording security against fraud or carelessness, that we think it necessary to explain it a little more in detail. Each volume of the Register of Sasines contains a certain stated number of leaves of writing paper of folio size, and is substantially bound. A docquet is written on the first page, mentioning the number of leaves contained in the volume, and giving general directions as to the manner of engrossing the deeds to be recorded in it. Another short docquet is written on the last page, specifying the number of leaves of which the volume consists. Both docquets are subscribed by the Deputy Clerk Register. Besides this, each leaf or folio is numbered; and formerly every tenth leaf used to be subscribed by the Deputy Clerk Register, and all the other leaves initialed by him. But in place of this last mode of authentication, every sheet of which the volume consists is impressed in water-mark with the emblem of the Scottish thistle and crown, and the words, 'Publick Records of Scotland.' There are thirty water lines on each page, to guide the engrossing clerk in writing.

No new blank volume is issued to any keeper, with the exception of the keepers in Edinburgh and Glasgow, until the corresponding volume is transmitted, in a completed state, to the General Register House in Edinburgh. In this way the regular transmission of the Books of the Register, immediately after the completion of each volume, is insured. The volumes, when transmitted, are carefully examined by the Deputy Keeper of the Records, whose duty it is to satisfy himself that they have been correctly kept.

Previous to the year 1809, the sheriff-clerks (in so far as respects Registers not transmissible to the General Register House) and the clerks of royal burghs provided themselves, in any way they thought fit, with books for registration purposes; and there was no uniformity in their size and form, and no authentication to provide against fraud. By the Act 49 Geo. III., c. 42, 'for better regulating the Public Records of Scotland,' the power of the Deputy Clerk Register to mark and issue blank volumes was extended to these Registers; and a general superintendence of them was conferred on the sheriffs-depute and magistrates respectively, who were instructed to report their state and condition, at least once a year, to the Court of Justiciary. These Reports, after investigation by the Court of Justiciary, were ordered to be transmitted to the Lord Clerk Register. The marking of the blank volumes, and the directions as to engrossing, etc., contained in the Deputy Clerk Register's docquet, although not followed by transmission to the Register House, have been very beneficial, as will be afterwards explained.

Blank Minute Books are, in like manner, issued to all the keepers of Registers which are ultimately transmitted to the General Register House; but they are not authenticated when issued, otherwise than by the water-mark on the paper. Each volume of the Register has its own appropriate Minute Book. When the volume of the Register is filled up, although the relative Minute Book may not be filled up, both are transmitted simultaneously to the General Register House.

Mode of registering sasines and conveyances.

The mode in which deeds and writs affecting land are recorded is as follows:—

When a sasine, or registrable writ of conveyance, is to be recorded, the original writ is presented to, and left with, the keeper of the Register for registration. The universal practice is for the keeper forthwith to make a note on the back of the writ, of the time at which it is presented, and of the name of the presenter. At this stage of the proceeding some of the keepers of Registers also make a short entry of the writ in a book kept by them, under the name of a 'Presentment Book,' which sets forth each day in columns, (1) A running number, denoting the order of presentment of the writs during the day; (2) the precise time of presentment; (3) the nature of the writ; (4) the names of the granter and grantee; and (5) the name of the presenter. But this book is not enjoined by statute, and is only kept by a few of the registrars, and varies in its form and contents, according to the views of the person keeping it. In some of the Registers where no Presentment Book is kept, the order of ingiving is made to depend chiefly on a running number, written in pencil, on the back of each deed. The duty of the keeper of the Register, after receiving a writ for registration, is forthwith to prepare a short minute or abstract, containing the following details: (1) The day and hour of presentation (which is held in law to be the time of registration); (2) the nature of the writ; (3) the names of the granter and grantee; (4) a short description of the lands affected, setting forth so much of the detailed description given in the deed, as is necessary to identify the property, but giving in all cases, where practicable, the parish and county in which it is situated; (5) the warrant, if any, on which the writ proceeds; (6) the warrant of registration, in cases where such is required; (7) in cases of burdens, the nature and amount of the burden created or transferred; (8) the name and designation of the presenter. This minute is, as soon as possible, engrossed in the 'Minute Book,' and after the writ is engrossed in the Register Book, there is added to the entry in the Minute Book, (9) a reference to the volume and page in which the writ is recorded.

The statutes require that the minute should in every case be signed by the actual presenter and by the keeper; but as it has been found quite impossible to prepare and engross the minute in presence of the presenter before he leaves the office, this formality has been almost universally abandoned in the District Registers; and in nearly all of them, a clerk in the keeper's office is named as presenter, and signs the minute as such. It is, however, uniformly signed, in terms of the statute, by the keeper.

In the Minute Books of the General Register of Sasines, and of the Particular Register for the Edinburgh district, there is written on the margin opposite to each entry, the name of the county in which the lands lie, and in the Minute Book of the other Particular Registers, the name of the parish in which the lands lie; so as to enable a searcher to alight more readily on what falls within his search, and to pass over all else, when turning over the pages of the Minute Book. In cases where no county or parish is mentioned in the description, the keepers are instructed, wherever from their own personal knowledge they can do so, to supply the deficiency by writing what they believe to be the name of the county or parish (as the case may be) on the margin, prefixing the word '*supposed*.'

The writs, after being thus entered in the Minute Book, are, with as little delay as possible, engrossed in the current volume of the Register, in the exact order in which they were presented for registration and entered in the Minute Book. The engrossment is collated by the keeper and his clerk, and signed by both.

Inhibitions and Adjudications.

The Registration of Inhibitions and Adjudications proceeds in much the same way. The writs and decrees not being numerous, and the particulars requiring to be minuted being few, the proceeding is more easy and rapid. The minutes merely state the date of ingiving, and the name and description of the person by whom and against whom the writ has been directed or decree obtained, with a reference to the volume and page of the Register in which the writ or decree is recorded.

Certificate of Registration.

Upon the original writ, whether a sasine, inhibition, or adjudication, when thus recorded, is indorsed a certificate of registration, containing the date of registration, and the page of the Register in which it is to be found, and the writ is then given back to the person who presented it, or to his mandatory.

Mode of Searching.

We shall next explain shortly the mode in which searches are made, by parties acquiring property or lending money, to satisfy themselves that they are in safety to complete the transaction. These searches may be made by any one, but in practice they are generally made by one of the official searchers, who have been appointed by Government to perform that duty in the General Register House in Edinburgh; and by the keepers of the District Register, so far as the Register has not been transmitted to Edinburgh. The person making the search grants a certificate of his having done so, specifying the name of the property or person against whom the search is made, the period of the search, the Registers searched, and the nature of the entries affecting the property described, or person named. This certificate, the form of which we shall have to revert hereafter, is accepted in practice, at least when made by one of the official searchers, as sufficient evidence of the state of the property, and of the real diligence affecting it. The importance of securing accuracy, along with economy and expedition, in this proceeding, must be apparent.

It has been already stated, that both the General and Particular Registers of Sasines, and of Inhibitions, are still in use; and that a sasine may be validly recorded, either in the General Register of Sasines at Edinburgh, or in the Particular Register of Sasines kept in the district in which the property is situated. In the same way, an inhibition may be validly recorded either in the General or in the County Register of Inhibitions, with this distinction, that registration in the General Register affects property in every part of Scotland, while registration in the County Register affects property only when situated within that county. To complete a valid search, therefore, it is indispensable that these four Registers should be searched.

Searching by the Minute Books.

The Minute Books, which perform the important function of authoritatively settling the priority of registration, were found at an early period to form a much more convenient means of making a search for incumbrances than the Registers. It was matter of the utmost importance, therefore,

that the minutes should be accurately framed, and that they should contain an abstract of, or intelligible reference to, everything material contained in the Register itself. At the same time, it was necessary that the form of the minutes should be condensed, in order to cause the least possible difficulty and delay in making a search; for the time required for a search, is, of course, increased in proportion to the length of each minute, and to the number of references required from the Minute Book to the Register. Great difficulty was experienced in striking the right medium, more particularly in abridging the lengthy verbal descriptions, which occupy so large a space in most of our deeds. This difficulty was increased by the minutes being required to be framed and entered in the Minute Book, immediately upon the deed being handed to the keeper of the Register. It was found that minutes thus hurriedly prepared were not in all cases to be relied on; while the great variety in the form and length of the minutes, which arose from their being compiled on different models, by different individuals, and in different localities, greatly embarrassed the work of the searcher. In 1811, these evils led to the Court of Session passing an Act of Sederunt, ordaining a blank book to be issued to all the keepers of Registers, properly prepared and marked, for the purpose of having all the minutes regularly engrossed therein. By this means, and by means of the instructions issued to the keepers of Registers from the General Register House, and the supervision exercised there, the minutes are now framed in a much more satisfactory manner, although we have had complaints made to us, by some of the searchers, of the variety of form and unnecessary length of many of the minutes. The great difficulty remains—to embody, in the condensed entry in the Minute Book, necessarily prepared without time for mature deliberation, a description such as to enable an accurate search to be made against the property, without its being too long for common use.

Difficulty of framing minutes.

Besides this difficulty, it was found, in the beginning of the present century, that the great increase which had taken place throughout Scotland in the number of deeds affecting land, and still more affecting building ground and houses in the rapidly extending towns, had so enlarged the number of volumes of the Minute Book, both in the General and in the Particular Registers, as to render search by means of the Minute Books a most tedious and laborious work.

Difficulty arising from bulk of Minute Books.

The late Mr Thomas Thomson, for many years Deputy Keeper of the Records—a gentleman to whom the people of Scotland owe a deep debt of gratitude, for his enlightened and untiring efforts to improve the Registers of the country—directed his attention to this matter with great anxiety, as is evinced by his numerous Reports made between the years 1807 and 1821 to the Lord Clerk Register, and to the Royal Commissioners who had been appointed in the beginning of this century to provide better arrangements for the preservation and more convenient use of the Public Records.

Mr Thomas Thomson.

After much consideration, and for the reasons which we shall hereafter have occasion to quote when considering the question of Indexes, Mr Thomson at length recommended, in reporting to the Commission in 1819 and 1821, the following plan for arranging and indexing the Registers, in order not only to give facility for, and to ensure accuracy in, searches, but also to afford a ready means of tracing in the Registers the state of all titles to land. His recommendations were adopted, and it will be presently seen how far it has been possible to carry them out in their integrity.

Remedies proposed by him.

(1.) For the Registers of Inhibitions and Adjudications he proposed to construct Indexes of the names of *persons*, arranged alphabetically; and he suggested for consideration whether the Indexes should be printed for the use of the officials.

Indexes to Inhibitions and Adjudications.

(2.) For the more complex Registers of Sasines he proposed that the whole sasines registered on each day, whether in the *General* Register kept at Edinburgh or in the *Particular* Registers kept in different localities, should, for the purpose after mentioned, be regarded as forming one chronologic series, and should be classified in groups or divisions corresponding to *counties*, so as to present a combined Register of the sasines affecting real property in each county of Scotland (the regality and Barony Parish of Glasgow being treated as a separate county); that there should, out of the materials thus arranged, be framed an Abridgment or Abstract of the Sasines of Properties in each county, which Abridgment should contain—(1) the name and description of the *granter* and *grantee* of the deed on which the sasine followed; (2) the description of the lands or other property conveyed, giving, with scrupulous care, the name of every *property*, or parcel of land forming a part of such property, contained in the deed, but omitting all unnecessary details; (3) the *parish* or *town* in which the property is situated; (4) the deed or writ which forms the warrant of the sasine; and (5) a reference to the volume and page of the Register on which the deed will be found engrossed. Such an Abridgment, contains the whole essence of a sasine. He proposed that these Abridgments of the deeds should be printed and bound up in volumes applicable to each county, in chronological order; and that each of the abridged entries should be prefaced by a *running number* continuously from the commencement to the end of the volume.

Abridgments of Sasines.

A volume of Abridgments of the Sasines of each county being thus prepared and printed, the next step recommended was to frame a key to the Abridgments, and, through them, to the Register, in the form of two *Indexes*—viz., an Index of the *Persons* named in the deeds contained in the volume, and a separate Index of the *Lands* or *Properties* affected by the deeds. In the Index of Persons, the names of those granting conveyances, and of those to whom they were granted, were to be arranged alphabetically; and, following each name, a reference was to be made, by means of the running numbers in the Abridgment Book, to the abridged entry, in that book, of the sasine following upon any conveyance granted by or to any person of the name thus indexed. In the same way, in the Index of *Places* or *Properties*, the name or names of every property described in each sasine, were to be arranged alphabetically; and a similar reference was to be made, by the running number, to every entry in the Abridgment Book containing the name or names of that property. The intention was, that a search should thereafter be conducted by means of these Indexes and Abridgments, and not, as previously, by the Minute Books. It is obvious, that if a party making a search were, in the first place, to take the Index of Persons, and by means of it examine all the entries in the Abridgment Book, of which the reference numbers were placed opposite to the name of the person searched against; and if he were

Indexes of Sasines.

the next place, to check his search by a second examination of the Abridgment Book, made by eans of the Index of Properties, a degree of accuracy would be obtained, amounting almost to rtainty.

Objects thereby attained.

By these recommendations of Mr Thomson, several very important objects were attained: (1) The bridgment and Indexes embodied in one Register the materials which otherwise required to be arched for in two; (2) these materials were classified in counties; (3) the Indexes led the searcher ore easily to the particular entries which affected not only the person but the land searched against;) the somewhat defective character of the minutes in the Minute Books was rendered of no importance, cept for a search embracing the interval that must at all times exist to a greater or less extent, tween the last completed volume of the Abridgment, with its Indexes, and the date of search; and) the Abridgment Books being in print, and the entries very concise, apprehension of the contents the entries was rendered not only more quick, but more sure.

Detailed mode of operation.

In order to bring this plan into operation, the process of Abridgment was begun soon after the te of the final Report, the starting point being the year 1780, so as to give, as soon as possible, the eans of making a forty years' search. The utmost care was taken, by repeated collation, to ensure the mpleteness and accuracy of the Abridgment and Indexes; and these have, in practice, been found to ford means for making a trustworthy search of the Registers, without the labour and uncertainty tendant on a search in the numerous Minute Books of each of the two Registers.

Appendix, No. I., pp. 57, 58.

That the plan of the Abridgments and their Indexes may be fully understood, we append ar entries from the Abridgment Book, with the relative entries in the Indexes; and to show the ntrast between the plan and the efficacy of the Abridgments, and the plan and the efficacy of the inute Books, we also append the entries in the Minute Book applicable to the same deeds. As an ustration of the condensed character of the information contained in the printed Abridgment, we may ıte that the sasines and other writs for the year 1850 occupy 707 printed folio pages of the Abridgent Book, while the same writs, as engrossed in the Register, occupy 85,260 written pages.

Progress made.

The Indexes to the Registers of Inhibitions and Adjudications, proposed by Mr Thomson, have en carried on without any difficulty. But obstacles arose at an early period, to carrying out his an of the Abridgments and Indexes of the Registers of Sasines.

Index of Names of Places.

(1) The descriptions of lands frequently contained a number of different names, and the spelling these names, often uncouth, was frequently varied in successive deeds relating to the same property. multiplicity of entries in the Index of Places became requisite, from the necessity of giving in the dex every separate name by which the lands might possibly be recognised or distinguished. The bour of construction, accordingly, became excessive, while the use of the Index was rendered tedious d laborious from the necessity of searching it under every separate name by which the subjects, or y part of them, were described in the Titles. The variation in the spelling was also productive of uch danger and uncertainty; for, while particular lands were sometimes placed in one part of the phabetical arrangement of the Index, they were at other times, owing to a change in their initial letter, tered in a different place. In Towns, again, properties were in many instances very vaguely deribed—so vaguely, indeed, as to be incapable of identification by name. As an illustration of this st difficulty, we may notice that, in the Index of Places for the forty years succeeding 1780, there are wards of 800 references to property which it has not been possible to enter in the Index by any tter distinctive title than, 'Tenement in Gorbals.' From the operation of these various causes, the dex of Places was found very difficult and tedious to construct; and as much anxiety was felt to push rward the Abridgment and the complete Index of Persons, the formation of the Index of Places was scontinued in 1830. We are informed that it was then intended to resume its construction so soon as full Index of Persons should be completed. But this has not yet been effected; and, in consequence, arches applicable to the period since 1830 are now made in the Abridgment Books, so far as brought wn, by means of the Index of Persons alone.

Discontinued in 1830.

Abridgments retarded by double set of Registers.

(2.) A serious difficulty also arose in the completion of the Abridgments and Indexes of the gister of Sasines from the system of keeping up *two* co-ordinate Registers of Sasines—the General gister in Edinburgh, and the Particular Register in local districts; and the necessity which consently arises, of cutting down and classifying, by counties, the voluminous contents of the General gister, and of amalgamating the contents of the two Registers in chronological order. In some of e country districts, a volume of the Register is filled up and transmitted to the General Register ouse, in a period of from two to four weeks. But in other districts, especially where large towns do t exist, and where transfers of, and securities upon land are comparatively infrequent, a volume is t filled up and returned under periods varying from six months, to one, two, and three years, and even ore; although, to lessen the evil, half volumes have latterly been sent to some of these localities. om these causes the compiling of the Abridgment Books is generally greatly in arrear. The entire of completed Abridgments at this date, comes down only to 1850. A further period of five years s been lately completed for some of the counties; but in others, the Abridgment Books and the ative Indexes of Persons are still eleven years in arrear.

Practical results on searching.

The practical result of this, in searching against lands within counties where the Abridgments e in arrear, is that the searchers have to resort to the series of Minute Books of the General and of e Particular Registers for the last eleven years; and when we state that the number of volumes, conning about 190 folios each, in which the minutes of the General Register of Sasines for that period contained, is fifty—thus requiring an examination of the contents of 19,000 pages, or at least of e marginal entries upon them—and that the Minute Books of the Particular Register for the district, hich are also voluminous, must likewise be searched—it is obvious that an excessive amount of time d labour must be required.

Private Indexes made by official searchers.

It is understood that the official searchers have, for their own private convenience, by working at tra hours, framed Indexes of the Minute Books, as respects names of persons, for the greater portion the years in arrear. But as they must still refer to the Minute Books for the description of the lands,

after the name of the person searched against is found, these Indexes, though they lessen delay, do obviate it; for the references to the Minute Book are greatly more tedious than references to Abridgments; while, if the minutes happen to be imperfect, the searchers must, as in other cases search through the medium of the Minute Books, refer to the volumes of the Register in which writs themselves are engrossed. In place of trusting to these private Indexes, the true remedy i provide for the speedy completion of the Abridgments and their Indexes; and we shall hereafter sub suggestions for effecting that desirable object.

Searches, and their expense.

The search, which a purchaser or lender is entitled to demand from a seller or borrower, embr forty years; and, according to the present system, it must be made for that period in all the follow Registers, unless a search in any of them is already in existence:—

(1.) The General Register of Sasines.
(2.) The Particular Register of Sasines.
(3.) The General Register of Inhibitions.
(4.) The Particular Register of Inhibitions.
(5.) The Register of Adjudications.

The expense of a complete search in these Registers, for a property in the county of Renfrew Regality of Glasgow, is stated, in a Return by the Deputy Clerk Register to the House of Commons 1856, to be—

Return Registers Scotland, No. 398 of 1856.

I. Fees of searching in Edinburgh, viz.:—

Fees of Books.				Fees of Sear	
10s. (1) General Register of Sasines, 40 years, at 2s. per year,				L.4	0
10s. (2) Particular Register of Sasines, 40 years, at 2s. per year,				4	0
10s. (3) Register of Adjudications, 40 years, at 3d. per year,				0	10
10s. (4) General Register of Inhibitions, 40 years, at 3d. per year,				0	10
10s. (5) Particular Register of Inhibitions, 40 years, at 3d. per year,				0	10
L.2 10				L.9	10
II. Fees of writing search, say four sheets, at 1s. per sheet,				0	4
III. Fees of books at General Register House,				2	10
IV. Fees paid at other offices:					
(1.) Sasine Office, Edinburgh, for current volume,	L.0	2	6		
(2.) Horning and Inhibition Office, do. do.,	0	5	0		
				0	7
Total fees, as stated in the Report,				L.12	11
For a search affecting lands in any other county, the fees of search in the Register of Sasines are only 1s. 6d. per annum, making a diminution of				2	0
Thus leaving, as the expense of an ordinary search in these Registers,				10	11
In addition to these Registers, the search, if intended to be brought down to the date of any particular transaction, must be continued in the current volumes of the Particular Register of Sasines, and Particular Register of Inhibitions, in the district and county offices. The fees of such continuation may vary to a small extent; but they may be estimated to amount to at least				0	7
If the Register of Interruptions of Prescription, and the Register of Writs passing the Signet (which is sometimes searched with reference to a peculiarity of inhibitions to be hereafter noticed) are searched, further fees will be incurred of not less than				0	7
Further, some counties have *two* places where Particular Registers of Inhibitions are kept. In such cases, further fees will be incurred of not less than				0	2
Agents' fees of memorandum, and of correspondence, with the different Registrars, etc., say				1	5
Total,				L.12	14

If the property searched against happens to lie in two counties, a search in the General Regist House of the Particular Register of Sasines, and of the Particular Register of Inhibitions, for bo districts or counties, with a continuation in the local Registers of both counties, is required. Th additional expense of the search for the second district or county would amount, at least, to L.5, 1(irrespective of agency; and if the lands lie in three or more districts or counties, a similar additi would be required for each. This estimate of expense applies to a search conducted, as respects t Registers of Sasines, by means of the Index of *Persons* only, which is at present the mode in whi searches are made. If an Index of Places were also used the expense would be greatly increased.

Expense much complained of, and prevents searches being made.

The amount of expense thus required for a search has long been complained of, even in transactio of considerable value; while in cases of smaller amount, the result is that searches are dispensed wit We have found that in most districts of Scotland searches are almost universally dispensed wi when the value of the property is less than L.500 or L.600; and in many instances, even when t value is greater, the seller stipulates that no searches shall be required of him. In some cases, t agent for the seller gives a guarantee against incumbrances. In others, a solemn declaration is accept from the seller, stating that no incumbrances exist. The practical result is, that in a very numero class of cases (more numerous, certainly, than we had anticipated before we visited the smaller pr vincial towns), the Registers of Land Rights have failed to fulfil one of the most important purpos for which they were established. Under the complete system of registration which prevails in Scotlan a search ought, in point of expense, to be procurable by the parties in every transaction, howev small; and in dealing with this part of the subject remitted to us, we have given much considerati to remedial measures calculated to effect that object.

Another subject upon which great complaints have been made by the public and by the legal ssion, is the charge made for registration in the General and Particular Registers of Sasines. Expense of registration.

Under the beneficial legislation of the last twenty years, the sasine has been virtually superseded, he forms of other deeds affecting heritage have been simplified and shortened. The professional or preparing titles have, in consequence, been much reduced. But no corresponding reduc- has been made in the expense of registration. On the contrary, a large *increase* in the vas made in the year 1849. The keepers of the Particular Registers, who are not paid by salaries the case with the officers in the General Register of Sasines) but by fees, represented to the of Session, that the shortening of the deeds, which was effected by the statutes passed between ears 1845 and 1848, had exercised so prejudicial an effect upon their official emoluments, that crease of their fees was indispensable. In 1849, an Act of Sederunt was passed by the Court, on amble assuming that a considerable diminution had occurred in the income to be received for ration, which enacted that, in addition to the old fee of 5s. per sheet of 400 words, an additional 1s. per sheet for writing, and a farther fee of 7s. 6d. for the certificate of registration, should be ed upon each deed, without any regard to the value of the property. Temporary increase of fees in 1849.

This large addition, amounting, on an average of registration fees, to somewhere about 40 per cent., nade applicable to the deeds registered not only in the Particular, but also in the General Register. pressure of these new fees, especially upon small transactions, is much complained of. The deeds red for these small transactions are generally short and inexpensive; and the fees of registration exceed those now payable for preparing the deed, although there can be no comparison between mount of labour and responsibility incurred by the agent and the registrar respectively. It was red in the Act of Sederunt, that the new table should only continue in force for two years; but at nd of the period it was renewed indefinitely, and is still in force. The severity of this impost oe more apparent, when it is recollected that a large number of cottages built on land held in nd worth not more, perhaps, than from L.50 to L.100 each, is to be found in the rural districts ghout Scotland; and when we mention that, in the course of our inquiries, we met with heritable ities recorded in the Registers of Sasines, for sums of L.50, L.40, and L.30, and in one instance e sum of L.16. Bears severely on small transactions.

We have thought it our duty to inquire how far the additional charges, imposed by this Act of unt, have been proved, by experience, to be required for the protection of the interests of the keepers District Registers, who were in office when the remedial Acts referred to passed the Legislature; e have made up a table, from the best materials we could procure, showing the gross income which ormer and present fees respectively produced, in fourteen of the districts in which (exclusive of burgh) Registers are established. We would have embraced the other districts in our table, but naterials applicable to them are not in our possession. It was intended, when the Act of Sederunt passed, that annual returns should be made by each registrar of the fees drawn by him; and this accordingly provided for in the original Act. But the provision was not specially re-enacted in ct of Sederunt extending the period, and many of the keepers have made no returns beyond the wo years; so that the authentic information which the Court intended to provide cannot be made able. But from the table prepared by us, which will be found in the Appendix, it will be seen the average aggregate income of the fourteen registrars referred to, for five years preceding 1845, L.6251, while in 1855 it had risen to L.9021, and, on an average of the three years 1858–59–60, 11,797. The table shows that, since the passing of the remedial Acts of Parliament, there has a rapid increase in the number of writs registered; and it is evidently in consequence of the hful growth of business, stimulated by these Acts, that the gross incomes of the registrars have not merely protected against any diminution consequent on the reduced length of the writs, but the aid, in part at least, of the new fees of 1849) largely increased.* How far justified. Appendix, No. II., p. 59.

If from the above sum of L.11,797 there were deducted 7s. 6d. (the new fee imposed in 1849 for ertificate) on each of the 8059 deeds, recorded by these registrars on the average of the same three , there would still remain a total average income of L.8772, in place of the average income of 51 of the five years preceding 1845.

We are of opinion that the Court of Session should be at once moved to inquire into this matter; f the facts are found to be as we have now stated them, the additional fees imposed by the Act derunt 1849, or, at all events, the fee of 7s. 6d. for the certificate, should be abolished, without g for any legislative measure which may be proposed in furtherance of the other views submitted s report. To what extent farther reductions may be made in the fees of registration, will be lered in a subsequent part of our Report, in connection with the general financial position of the ter House as respects the Registers of Land Rights. Ought to be abolished.

Having thus given a short account of the system of registration of land rights in Scotland, and its t working condition, it is proper, before we proceed to explain the alterations we propose on it, ve should state the conviction on our minds, strengthened by our recent inquiries, that, viewed as le, it is the most complete and practically useful system which has yet been devised in any country. eel, therefore, that we must be on our guard not to disturb unnecessarily that which is, on the The general excellence of the system.

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* From the returns above mentioned, although incomplete, and from the table prepared by us, some curious results e deduced; and although they do not appear to have any direct bearing on our present inquiry, it may be useful them:—(1.) The increase in the number of writs which has taken place since 1845 has been chiefly in those g properties under L.2000 in value. (2.) The average length of a writ affecting property above L.2000, as com- with one affecting property under L.2000, is (judging from the returns from the General Register and Particular r at Edinburgh) as 12 to 7, or thereabouts. (3.) The proportional number of the former to the latter varies much in ferent Registers. In the General and Particular Registers at Edinburgh, those above L.2000 form about one-third whole; in Renfrewshire, one-fifth; in Berwickshire, one-twelfth; in Forfarshire, one-thirteenth; and in Stirling- ne twenty-second. (4.) The average fees of registration, per writ, are much greater in the General and Particular r at Edinburgh, which are massed together in the returns, than in the other District Registers. The excess in some es amounts to as much as fifty per cent. As the scale of fees is the same, this must arise from the greater length writs.

whole, working well; and not to recommend changes which, although apparently more consonant wit theoretical perfection, might be difficult to reconcile with the peculiarities of our existing forms of co veyancing, and with long-established professional habits and usages.

Origin of the present movement for inquiry.

The complaints of the expense of registration, and of searches, which we have noticed, led, son years ago, to investigations, by different legal bodies, into the causes of the expense, and to the co sideration of suggestions for the improvement of registration generally. The Faculty of Procurato in Glasgow took up the matter in 1856, and a committee made an elaborate report, which w submitted to and approved of by the Faculty. Similar investigations were afterwards made b committees of the Faculty of Advocates, and of the Society of Writers to the Signet, and of t Society of Solicitors before the Supreme Courts; and their Reports, which contained much valuab matter, were approved of by these several bodies, and printed for circulation. They concurred (wit some comparatively unimportant differences) in recommending remedial measures substantially of t same description as had been suggested by the Faculty of Procurators in Glasgow.

Sources of information resorted to.

In fulfilling the duties entrusted to us, we have carefully considered the various suggestions mad in these Reports. We have also examined for ourselves the different Registers in the General Regist House, with their Minute Books, Abridgments, and Indexes. We have procured information upon a matters of detail by issuing printed schedules (copies of which we transmit herewith) to the Deput Keeper of the Records at Edinburgh, to the official Searchers, and to the Keepers of the Gener and Particular Registers, to which we have, in almost every instance, received full and satisfactor replies. So far as the information thus obtained was capable of being usefully tabularized, it will b found in the table given in the Appendix. We have also visited most of the seats of the loc Registers, both for districts and for burghs; and when doing so we have had conferences with as man of our professional brethren in the different localities as could conveniently be brought together o necessarily short notice. To them we explained the general nature of the measures which were, at t time, under our consideration; and we have had the benefit of their views and suggestions. We hav had frequent meetings with Mr Pitt Dundas, the Deputy Clerk Register; with Mr Robertson, th Deputy Keeper of the Records; with Mr Brodie, W.S., the Keeper of the General Register of Sasine and his Deputy, Mr Fraser; and with the official Searchers—all of whom have afforded us, in th frankest and most cordial manner, every information at their command, and have given us their opinio upon the points submitted to them.

Appendix, No. III., pp. 60, 61.

We have also carefully considered the valuable Reports by Mr Thomas Thomson, to the Lor Clerk Register, and to the Commissioners on the Public Records, already referred to; a valuable pap read to the Social Science meeting at Glasgow in 1860, containing a general view of our system registration, by Professor A. M. Bell, of Edinburgh University; the Third Report of the (Scottish Law Commissioners appointed in 1837; the Second Report of the Commissioners on the Law of Re Property in England, appointed in 1829; the Reports of the Commissioners on Registration i England in 1852 and 1859; the Report of the Select Committee in the Commons on the Cadastr Survey, 1862; and the recent Reports and suggestions by Mr Lane, Colonel Leach, Mr Hardin and others, on the Registers of Lands Rights in Ireland. We have personally inspected the loc Register kept in London for the County of Middlesex, and have had interviews with the Deput Keeper. We have also had an interview with Colonel Sir Henry James, and with Colonel Leach, i regard to the use made, and proposed to be made, of the Ordnance Survey in Ireland, and the facilitie which the corresponding survey in Scotland is capable of affording in the transfer of land here, and th registration of land rights. These gentlemen favoured us with very full explanations, and offered t give every facility for rendering the Scotch Survey available, in any way that might be found practicall useful.

Improvements recommended in registration.

Having thus endeavoured to make ourselves masters of the important matters embraced in thi inquiry, we have anxiously considered what improvements might be effected upon the present system.

Double Registers ought not to be continued.

The first and leading improvement which we recommend is, that the *six* Registers of *Sasine Inhibitions*, *Adjudications*, and *Interruption of Prescription*, at present existing, should be reduced to *tw*

When these Registers were established, the means of internal communication in Scotland were s few and uncertain, that a double set of the Registers of Sasines and Inhibitions, to be kept in Edin burgh and in other districts of the country respectively, was indispensable. But we have satisfie ourselves, as more fully explained hereafter, that no necessity now exists, on that ground, for separat Registers; and, therefore, if important benefits can be obtained through a diminution of their number either as regards registration or search, their number ought to be diminished.

New Register of Sasines should be divided into counties.

(1.) We accordingly recommend that the General and Particular Registers of Sasines should ceas to be kept in their present form; and that, in lieu of them, one Register of Sasines should be provided to be made up of a separate series of volumes for each county in Scotland, in which all the sasine of lands lying within that county (with the exception of property in royal burghs, which we mea to deal with separately) should be exclusively recorded.

Reasons for new Register being so divided—

1. Registration.

We prefer the registration of sasines, in a Register divided into counties, rather than in a Genera Register for all Scotland, on grounds which appear to us to be important: (1) as regards registration and (2) as regards searching.

In reference to registration, it is necessary to bear in mind that the number of writs sent annuall into the General Register House for registration in the General and Particular Registers is at presen about 6000. At the great money terms of Whitsunday and Martinmas, but more especially the former the number sent in for registration, *per diem*, is very large. We find that on one day as many as 7 have been sent in for the General Register, and 139 for the Particular Register for Edinburgh. Th

sequence is, that at these seasons a delay of more than nine weeks has been known to occur in the grossment of the deeds in those Registers, and, consequently, in the return of the originals to the iver; while the operation of minuting so many deeds is attended with difficulty and risk of error. in place of 6000 writs, upwards of 14,000 per annum were to be sent in to be recorded in one neral Register, and minuted in one Minute Book, the confusion and delay would be so great as to ount to impracticability. A certain extent of subdivision is therefore essential even for registration.

But in reference to searching, the subdivision of the Register is still more important. It is obvious t, the narrower the field or area is, over which a search is to be made, the more expeditiously and nomically can the search be executed. It is not necessary, we think, to do more than to draw attention the practical difficulties which would arise, if all searches were to be carried on simultaneously, by nerous parties using one and the same set of books, comprising a General Register for the whole of tland. Various plans have been, from time to time, suggested both in this country and in Ireland, which the area of search might be restricted even more than by a subdivision into counties; but, reasons which will be afterwards explained, we are not prepared to recommend a greater subdivision the Register in this country. We may notice now, however, one of the reasons which has had weight h us—it is, that the system of registration by counties is in accordance with the plan of the existing ridgments, which was established by Mr Thomson, and has been for many years in successful operation. 2. Searching.

With regard to deeds which may contain lands in more than one county, we propose that such ds should be engrossed in a separate volume of the Register to be appropriated for them, and be designated by a specific title, such as, 'Sundry Counties Register;' or in the Register Book of e of the counties only; and that a minute of the particulars of every deed thus registered should be ered in the Minute Book of *each* of the several counties, in which the lands described in it lie, with eference to the Register Book in which it is engrossed; and that an abridgment of the deed should entered in *each* of the corresponding County Abridgments, or in a separate volume of Abridgments, be appropriated to writs recorded in the Sundry Counties Register, as may be found most convenient. either way, the deed would be disclosed on a search made, either in the Minute Book or in the lex of any one of the counties to which it related. Deeds affecting lands in more than one county.

We further recommend, as respects the proposed new Register of Sasines by counties, that the ks composing it should be compiled in Edinburgh, and should remain in the Lord Clerk Register's partment in the General Register House, where they should be submitted to abridgment and index- , with as much rapidity as that very delicate and responsible operation admits of. Our reasons for eferring Edinburgh as the seat of the Register, will be better understood if we delay stating them til we have explained some of the arrangements by which we propose to facilitate searching; and shall therefore resume the subject, and discuss it fully in a later part of this Report. We shall also cuss, in a subsequent part of our Report, the question, whether the proposed change should be made ultaneously throughout Scotland, or gradually as respects the different districts. Where new Register should be made up and kept.

(2.) We recommend that the Particular or County Registers of Inhibitions, so far as regards the gistration of that writ, should be abolished; and that, thereafter, all inhibitions affecting heritable perty should be recorded in the General Register of Inhibitions at Edinburgh. Double Register of Inhibitions should be abolished.

The peculiar character of Inhibitions renders one General Register the most appropriate for them, th as regards registration and searching. An Inhibition, if recorded in the General Register, affects ds situated in every part of Scotland; while, if recorded in a County Register, it affects only lands thin that county. The number of Inhibitions registered in a year is not great, and nearly the whole them are registered in the General Register. Moreover, this Register can be searched only by an dex of *Persons*, as the writ does not specify any *Lands;* and one General Register, with an Index of t description, facilitates a search, just as much as a County Register, with its relative Indexes, facili- es a search in the Register of Sasines.

(3.) We recommend that the Register of Adjudications, which has always been kept in the form one General Register, should be amalgamated with the Register of Inhibitions. The number of judications recorded in one year is small. As in the Inhibition Register, the search for an adjudica- n is made by means of an Index of *Persons* only, without reference to lands. Register of Adjudications should be combined with Inhibitions.

Some matters of detail will require to be arranged in the mode of registering adjudications, to suit proposed amalgamated Register. At present, separate writs, called Abbreviates of Adjudication, prepared by the extractor of Court; and these are bound up so as to form the Register, while ibitions are copied into bound volumes. We recommend that the separate abbreviate should be pensed with, and the decreet itself engrossed in the Register, as inhibitions are at present.

In some recent statutes, provisions are made for recording abbreviates of adjudications in the gister of Sasines, and the effect of a recorded sasine is given to such registration. It may, therefore, necessary to provide, that the extracted *decreet* of adjudication should be registrable in the Register Sasines, and should have, in all respects, the same value and privileges as the *abbreviate* has at sent; and that the same consequences should follow, on registration of the decreet, as now follow registration of the abbreviate.

(4.) The Register of Interruptions of Prescription is little used. In the eight years from 1834 to 42, it contained only twenty-one writs. The writs always contain a full description of the lands; d this Register may most conveniently be amalgamated with the Register of Sasines. Register of Interruptions should be combined with Register of Sasines.

The practical effect of these measures would be to limit searches to two Registers in place of the which must be examined at present, materially reducing the delay and expense of searching. Effect of these measures.

In recommending the abolition of the District Registers of Sasines and Inhibitions, and the substitu- n of single Registers to be kept in Edinburgh, we assume, as an indispensable condition, that the ervention of an Edinburgh agent to effect the registration of writs sent from the country, and the Indispensable conditions of Central Registers.

consequent expense of double agency, shall not be necessary; but that it shall be in the power of practitioners in all parts of the country to transmit their writs directly to the General Register House by post, and that the keepers shall be required immediately to acknowledge receipt of the writ, and also, when recorded, to return it to the sender by post. In this we foresee no difficulty. A large number of the writs recorded in the General Register of Sasines has been, for years, transmitted directly to the keeper of the Register by post, and receipt acknowledged, and the writs ultimately returned by him, by post. At present no keeper is under an obligation so to receive, or acknowledge and return deeds; but it is proper that his duty in this respect should not be left in doubt, or be subject to caprice. We therefore propose that this matter should be provided for by a distinct regulation. We further suggest that the keeper's letter, acknowledging receipt of the writ, should specify the day and hour when it is recorded, so as to give the sender authoritative evidence of the registration which he may use in settling a transaction, before the writ itself is returned. A short printed form of notice, with blanks left for the name or description of the writ, and for the day and hour of registration, to be filled up and signed by the keeper, is all that would be requisite.

Alleged risk created by suppression of District Registers.

It has been stated to us, as a difficulty in the way of transmission by post to the registrar, that a party delivering a deed to a purchaser or lender, to be transmitted for registration, might himself, at the same time, fraudulently transmit for registration another and adverse deed, the existence of which he concealed from the purchaser or lender; and, as priority in registration gives the preference, that the last deed would exclude the right of the purchaser or lender, should it enter the Register first. Such a fraud might no doubt occur; but it forms no objection to the plan proposed, for it might as easily occur under the present system. Nay, the double Registers, now kept in different places, afford more facility for such a fraud than would exist under the system proposed. It would be expedient, however, if legislative improvements are to be made, that care should be taken to prevent, as far as possible, any fraud of the kind now supposed; and we would suggest that, whenever a registrar received, on the same day, two or more deeds, flowing from the same party, and affecting the same lands, he should, unless he had received instructions to the contrary from both the ingivers, while he registered both deeds in the order in which they came into his hands, intimate the facts to the sender of each, so that the parties interested might instantly have it in their power to take measures for their protection. To meet such possible cases, provision might also be made, that all questions as to the preference of such deeds, *inter se*, should be held to be suspended, notwithstanding priority of entry in the Register, until the issue of proceedings at law, if such should be taken by any of the parties interested within a certain limited period after the date of the registrar's notice. A marking to that effect might be immediately made on the margin of the Minute Book or of the Presentment Book; and on the expiry of that limited period, if no proceedings had been intimated to him, the registrar might expunge the suspensive marking; after which all questions of priority should be held as finally fixed by the order of registration.

Safety of transmission by post.

We have to add, on the head of transmission by post, that, notwithstanding the great inconveniences arising from the double set of Registers, we should scarcely have been prepared to recommend the abolition of one of them—whether it resulted in the keeping of a single Register for each county in Edinburgh, or for each county within itself—unless improved means had been provided for the conveyance of deeds, by the establishment of cheap postage, and unless we had been certiorated by experience of the perfect safety of their transmission by post. On this last point we have been fully satisfied by the returns we have received from the keepers of all the Registers. It appears from these returns that while nearly a fifth part of the whole writs recorded in the General Register House is now transmitted by post, the proportion transmitted to some of the District Registers is much greater. In Ayrshire and Fifeshire, four-fifths are sent by post to the seat of the District Registers; and the proportion in several other districts varies from four-fifths to a half. This proves that the post is already universally accepted as a cheap and convenient auxiliary to registration. The same returns inform us, that though transmission by post has been so extensive for a number of years, not a single instance has occurred, throughout Scotland, of a deed entrusted to the Post Office for the purpose of transmission to the Register having been lost, or even delayed for an hour. This is the result, although scarcely any of them has been registered at the Post Office; and although the great majority has been sent in book-post packets.

Registered letters.

The utility and the safety of the postal transmission have thus been fairly tested. Of course, however, it will be open to parties who may feel anxiety on the subject of their deeds, or who may have to transmit deeds more than usually valuable, to obtain still further security by the registration of their packet at the Post Office for the small fee that is now charged.

Mode of transmission in Ireland.

We may notice a provision in the Irish Register Office—that deeds for registration shall be received by Commissioners in certain specified localities, and transmitted by them to the Registration Office in Dublin—where the whole Register is kept. Looking to the extent and safety of postal transmission, we do not think that such a provision is necessary in Scotland.

When consolidation should be effected.

We have thought it best to complete the explanation of what we propose as to the consolidation of the Registers, before adverting to a matter which also requires consideration. We refer to the period or periods at which the change should be introduced. Were it practicable to make the transition from the present to the proposed system at once, there can be little doubt that it would be most desirable to do so. But there are obstacles which stand in the way of an immediate general change, and render it necessary to consider whether any other course is open.

In the first place: Such a large and sudden extension of the business of the Registration Department in Edinburgh as would be the consequence of imposing on it, after a certain day, the duty of registering greatly more than double the number of writs ever registered there before, would unavoidably lead to confusion, and occasion risk and inconvenience to the public. Many of the additional

cers and clerks, employed for the first time in the office, would be new to their occupation, and rcely qualified to perform satisfactorily the work assigned to them; and the arrangements, however ll considered beforehand, could not be expected all to succeed from the first.

In the second place: The present keepers of some of the Particular Registers in the country claim ited interests in their offices, and would, no doubt, demand compensation on being deprived of them. few of these might probably not object to transfer their services to Edinburgh, where it is possible y might be provided for, by being appointed to similar offices there. But all could not be so pro- ed for; and the amount of compensation which might require to be paid to them during their lives st not be lost sight of.

For these reasons, we think it desirable that the measure should be introduced gradually; and h this view, we recommend that, in the first instance, only so many of the smaller District or County gisters as would together furnish, on an average, about 1800 writs per annum for registration, should transferred to Edinburgh, and placed under one superintendent, as afterwards explained; that the responding County Registers should be at the same time commenced in the General Register House; t all registration, in the General Register, of deeds affecting lands in these counties should cease, ept in the case of deeds referring to lands in more than one county; and that all deeds of that class uld, as a temporary measure, be registered during the period of transition, in the General Register, lieu of the 'Sundry Counties Register' proposed by us, which would not be commenced till the full nge should be effected. So soon as another convenient opportunity occurred, another set of District County Registers, furnishing, on an average, another 1800 writs per annum, should be in like nner transferred; and so on, until the whole have been brought in, and the new system fully ıblished, in the form we have proposed. We apprehend there could be no objection to leave the her officials of the Register House to fix the time or times at which the various District or County gisters should be thus transferred.

In this way, although the benefits expected to be realized from the change would not accrue at :e, the difficulties which might arise from a more sudden transition would be avoided.

New arrangements to facilitate searching.

We propose next to consider those changes on the present system of the Registers, which appear us likely to afford increased facilities for searching, and at the same time to lessen the risk and reduce expense. With this view, we shall hereafter suggest the adoption of what we have termed 'Search eets,' which is, in our opinion, the plan best calculated to improve and simplify the operation, not y of searching for incumbrances, but of registration. That plan, however, even if it should be ›pted, could not come into full operation until after the lapse of a number of years. Besides, the earch Sheet' would not meet the case, which frequently occurs, of parties consulting the Registers Land Rights for the purpose of tracing the history or proprietorship of lands; and would not, there- e, however successful, supersede the necessity of improving the machinery by which the Registers at present consulted. Some of the provisions, indeed, which we are to suggest, may possibly be pensed with after the 'Search Sheet' is in full operation; but we are of opinion that, in the mean- e, all of them should be adopted. Under this head, then, we shall suggest amendments; first, on Register of Sasines, and second, on the Registers of Inhibitions and Adjudications, and on these gences themselves.

Farther account of Index of Places.

I. The Register of Sasines.—We have already stated that the Index of *Places* recommended Mr Thomson was temporarily discontinued in 1830, and has been in abeyance since that date. e subject, however, is a very important one, and we think it right to explain more fully what Mr omson's plan was.

Mr Thomson's views.

Mr Thomson refers, in nearly all his early Reports, to an Index of Places, as well as an Index of sons, as being an essential feature of a system of Indexes. In his Thirteenth Report he deals with question in detail. With reference to the Register of Inhibitions, he says: 'The formation of Tables Reference or Indexes to the Register of Inhibitions, is a measure comparatively easy; inasmuch as it ht to be an Index of Persons only, and is not complicated, as in the case of the Register of Sasines, the necessary connection of persons and places.' As to the Register of Adjudications, he makes the e remark. But with respect to the Register of Sasines, he adds: 'In constructing a proper set of exes or Tables of Reference to the Register of Sasines, the difficulties are such as to have hitherto vented me from effectually availing myself of the provisions of the Act of Sederunt 1811, refer- to that class of records. The nature of these difficulties will readily occur, on recollecting that eference to places as well as to persons is indispensable; that the connection of persons and places t be indicated, or rendered easily discoverable, in order to render such an Index practically useful; besides the General Register, which may embrace indiscriminately the sasines of lands in every of Scotland, there are eighteen other Particular or Local Records of Sasines; and that these re- ls are transmissible to the General Register House as soon as each volume is completed. Hence it es, in the first place, that even in constructing the Index to a single volume of this Record, as will answer all the purposes of an easy and perfectly accurate search, there is no slight degree ifficulty in devising such a plan, as on the one hand may be executed with facility and accuracy, on the other may afford all the requisite information which a regular and laborious search of the ord itself is usually employed to procure.'

Mr Thomson's Thirteenth Report, 1819.

Report, p. 15.

He explains that he had had meetings with committees of practising professional men, and had idered the subject with them; but that he was still dissatisfied, in his own mind, with any of the s that had been proposed, and would give the matter further consideration, and deal with it in a equent Report.

Mr Thomson's Fourteenth Report, 1821, p. 19.

The subject was resumed in his Fourteenth Report, and the plan which he had then matured is thus ribed: 'In my last Report, I stated some of the difficulties which had been experienced in devising a for the progressive Indexes to the Registers of Seisins, General and Particular; and I concluded,

with venturing to express my dissatisfaction with the various proposals that had been made by othe or suggested by myself. I shall now beg leave to explain, in as few words as I can, the method whi on the fullest consideration, has appeared to me the best.

'It will be kept in view, that in framing Tables or Indexes to the successive volumes of th Registers, antecedently to their transmission to the General Register House, a proper alphabetical Ind could be made applicable to only one, or at most two or three volumes; and that in this way a v number of detached Indexes would be accumulated, which could not be consulted without a great d of trouble, and which could not be connected together, but by reducing the whole into a larger seri It is next to be remembered, that in the actual consultation of these records, a great part of the labo arises from the very voluminous extent of the General Register of Seisins, applicable to the whole the kingdom, and in which the seisins of all the different districts it comprehends are blended togeth without any local arrangement.

'Having these things in view, it has appeared to me desirable to require of the Keepers nothi more than a chronological Table or Abridgment of the instruments recorded, such as will admit of bei continued without interruption, and connected in its successive portions without any difficulty, or t danger of any omission. In framing this chronological Abridgment, it will serve all the purposes view to transfer from the Minute Book the essential particulars of each instrument in the shortest a most perspicuous form.

'In the next place, when it is considered that every search in these Registers has primarily reference to lands or heritable estates, of which the local situation is perfectly known, it will not, I thin be disputed, that a vast facility and abridgment of labour would be found to arise from breaking do these chronological Abridgments into a *county arrangement*. This is no untried experiment. T Record of Retours, like the General Register of Seisins, embraces the whole of the kingdom; and framing the Abridgment of *Special* Retours, a subdivision and arrangement of this sort was adopte which has been found productive of the greatest convenience. In this way there would, for eve shire, be a separate chronological Abridgment of Seisins, in a form which, without any further ai would admit of comparatively easy research, inasmuch as the seisins in any single shire never c exceed a twentieth part of the whole General Record, and in many shires do not amount to a fiftie or seventieth part.

'But even in the formation of a chronological Abridgment the measure ought to be carried further and instead of one Abridgment of a particular shire for the General Register, and another of the sam shire for the Particular Register, I am decidedly of opinion that the two ought to be blended into on chronological series—each entry having its proper reference to the General or the Particular Registe as the case may be. In this way there would be a separate Abridgment for each county, embracin every seisin that had been taken in that county within the period to which the Abridgment applies, an which, of course, ought not to be shorter than the period of prescription in heritable rights. Suc Abridgments, even without any further aid, would evidently furnish facilities of research greater, ou of all comparison, than a numerous series of Tables or Indexes, constructed on the best plan that ha yet been proposed.

'But the measure ought not to stop short here. To these chronological Abridgments ought to b adapted a set of alphabetical Indexes of Persons and of Places, with reference to the progressive *number* in the Abridgment, and in this manner the particular object of inquiry would be discoverable almos at a glance; and a search, which now occupies many days and weeks, might be accomplished in a fe minutes. When completed in this form, the work would bear the closest possible analogy to th Abridgment of Retours; and, from the acknowledged utility of that work, it seems fair to predict tha the one now proposed would prove of incalculable advantage.

'It would be in vain to conceal that, with a view to the past, the compilation of such a work woul be extremely laborious, and would demand the most scrupulous accuracy of execution. It is, however an undertaking which I conceive to be fully within our means, and to the success of which I should b anxious to contribute every degree of pains in my power.'

In Mr Thomson's opinion, then, an Index of *Places*, or an Index having reference to the lands in addition to an Index of *Persons*, was indispensable.

A search by means of an Index of Persons liable to error.

Our own experience, as well as the information obtained by us from other practitioners, has satisfie us that both errors and omissions do occasionally occur in practice, in a search conducted exclusivel by means of an Index of Persons. It may be of use to point out what are the causes which most fre quently lead to these errors and omissions.

(1.) The omission, by the compiler of such an Index, of a reference to the name of some perso by whom a deed has been granted. (2.) The overlooking, by a searcher, of a reference to the name o some person. (3.) The absence, in an Index of Persons, of the name of the person whose deeds ar being searched against, when he has completed his title by Charter of Resignation. In such a case, i is the name of the superior of the property by whom the charter is granted, and not the name of the las owner, which appears in the Index of Persons. Thus the necessary link for connecting the deeds o the new proprietor with the former is broken; and unless the searcher has the name communicated t him, writs flowing from the latter do not appear to relate to the same progress of titles, and are liable t be passed over in such a search. And (4.) Securities granted beyond the prescriptive period of fort years, and kept in force by the payment of interest, will not, if the name of the party making up a titl to such a security is different from that of the original creditor, be brought into view in the Index o Persons, or discovered by a forty years' search in it.

Would be obviated by an Index of Places, if practicable.

The mere compiling of a separate Index with reference to *lands* would go far to obviate the ris arising under the first head; while the risk under the second, third, and fourth would be much dimi nished by its affording the means of a check search against the lands.

Errors arising from laxity of practice.

While we have thus endeavoured to explain what are undoubtedly the chief sources of the error and omissions complained of, it is right that we should state, that, after very careful inquiry, we hav satisfied ourselves that most of the errors and omissions which have occurred in searches, conducte by means of the Index of Persons, have arisen from a laxity of practice on the part of those orderin

rches. We mean, therefore, to suggest regulations to be observed by practitioners in giving instrucns for such a search, in the belief that thereby the risk of error may be greatly lessened.

But though much benefit may be derived from more precise instructions being given for a search, we nk a separate Index, to afford means of search, or of a check search, against lands, is still requisite.

Index of Places suggested by Mr Thomson not practicable.

We have, therefore, been anxious to see our way to the resumption of the Index of Places, begun d carried on for some time on the plan suggested by Mr Thomson. If such an Index could be rendered rkable, it would serve the double object of enabling an effectual search to be made against lands, hout relying on the names of the owners, and of affording, when desired, a mode of checking a search nducted by means of an Index of Persons. But we have not been able to satisfy ourselves that Mr omson's Index of Places is capable of being compiled with the requisite degree of accuracy, or of ng thrown into a form to be profitably used for either of the above objects.

Reasons for this conclusion.

In a matter so important, however, it is only proper that we should state fully the reasons which e influenced us in coming to this conclusion. The embarrassing difficulties which we have already ticed as having been experienced in framing this Index prior to 1830, and in using it for the purpose a search for incumbrances, have been aggravated by the increase in the subdivision of land which s since taken place throughout nearly the whole of Scotland. In such subdivision, more especially the villages and towns, the new plots of ground do not usually receive in the Titles, any distinctive me. They are very frequently, however, described as parts and portions of the larger property of ich they originally formed a part, and the name of it is mentioned. Where this is done, the larger d smaller properties would both appear under the same name in an Index of Places. But in other es there is no name of a place or locality given, except the name of the parish and county, and the its affecting these would of course not be embraced at all in an Index of Places. Another difficulty, which we formerly omitted to refer, arises from the rights of property and superiority in the same nds being described in the same words. The compiler is thus perplexed, and his work impeded and ndered imperfect; while the searcher is compelled either to examine in the volumes of the Register ery deed which may be stated in the Index as referring to lands situated in the town, barony, or rish, so as to ascertain the identity of the property, or to have recourse to the Index of Persons, in ich, through the names of the granters of the different deeds, he may ascertain whether the property ntained in them is the property against which his search is directed. The loss of time and the pense caused by the former create an almost insuperable bar to the conduct of searches in this nner; and if the latter alternative be resorted to, the search no longer possesses the character of a arch against lands made by means of an Index of Places.

Appendix, No. IV., pp. 62, 63.

In order that the difficulties and embarrassments occurring in the compilation of an Index of aces, and in its use as a means of search may be more fully understood, we have printed, in the ppendix, an extract from a communication made by Mr Robertson, the Deputy Keeper of the ecords, to the Committee of the Faculty of Advocates, who reported in 1857; and the answers which ere returned by the official and non-official searchers to the queries which we submitted to them. To ese papers we beg to refer.

Another Index suggested.

In the circumstances now explained, we have thought it our duty to consider anxiously whether a fferent form of Index, attaining the same objects, but free from many of the defects urged to the dex of Places, might not advantageously be substituted for it; and we have to suggest one which we ay call a *Parish* Index.

Mode of constructing proposed Parish Index.

We propose that it should be compiled by extracting, from the Abridgment ook of each county, the running numbers which denote the entries of all lands situated in the county, d by arranging them, under separate headings, according to the parishes in which the lands severally , so as to form an Index to all the entries in the Abridgment Book, of all the lands in each parish. In der to attain another separate object, which will be immediately explained, we propose that the runng numbers in each parish should not follow each other in a merely chronological order, but should again subdivided and classified, according to the names of the *persons* by whom the writs were verally granted. Such an Index, we think, would be beneficial not only in affording the means of rect search against *lands*, where any one wished such a search, but in affording also a much shorter ode of making a search, by means of the names of *persons*, than exists at present.

Specimen given.

The following is a specimen of the form of the proposed Parish Index, applicable to the parish of undee, in the county of Forfar:—

'DUNDEE PARISH.

'Anderson, John, . . 304, 715, 910
' „ James, . 3, 507, 820
'Black, Peter . . 115, 610'

This Index could be compiled with the greatest ease and accuracy, if the name of the parish were iformly contained in the deeds to be recorded, so as to be transferred to the Abridgment Book. In ct, the compilation would be a purely mechanical operation, not costing one-fourth part of the time d labour required for compiling the Index of Places. Supposing the operation to be conducted with ie care, no omissions or errors could occur similar to what have been pointed out, as unavoidable in e preparation and subsequent use of an Index of Places.

Ought to be imperative to furnish name of parish before registration.

Some deeds, we are aware, do not at present mention the parish; and to meet that case we propose make the insertion of the name of the parish in a deed an indispensable requisite of its registration. is not necessary for securing this, that a deed in which the parish is omitted should be declared null. ie keeper of the Register might be enjoined to refuse its registration till the party offering it should pply the defect by endorsing upon it a warrant declaring the parish, similar to the warrant of regisation now in use; and the validity of the registration might be made dependent upon the correctness the deed, or warrant, in this respect. If the parish should happen to be doubtful, from its boundaries ing ill-defined or from any other cause—an occurrence which must now be very rare, after the pains ken to define the boundaries of parishes on the Ordnance Maps—one or more adjoining parishes, in one other of which the lands must undoubtedly lie, might be mentioned alternatively. The deed would en be indexed in both or all of these parishes, without greatly encumbering the Indexes; and the

object would be attained, of providing, by means of the Index of Parishes, a certain guide to all dee affecting the lands.

Mode of using the Index—

As respects the mode of using the proposed Parish Index, we shall consider it (1) as a means search against lands, irrespective of names of the owners, and (2) as affording means of search again owners conducted by an Index of Persons; and we shall contrast it with the existing system.

1. For a search against lands;

(1) For the first purpose, the searcher would require to examine in, the Abridgment Book, all t entries distinguished by running numbers in the Parish Index, without paying any attention to t classifications under the names of persons. In some cases this would undoubtedly require much tin and labour; but we are not satisfied that, on an average, more of either would be required than for similar search in the present Index of Places. An analysis which we have obtained and have giv below, of the number of entries in the General and Particular Registers of Sasines for the year 185 affecting properties in each parish of the county of Ayr, enables an approximate estimate to be form of the labour that would be required for such a search in the proposed Parish Index. As respects t labours attending a similar search in the Index of Places, we have already noticed that in towns whi are not burghal, many hundred entries are sometimes found under one general name, requiring, course, an examination of each in the Abridgment Book, at the cost of much time and labour. Wi respect to rural properties, a similar difficulty is often caused by the number of the names of properti contained in one deed, each of which requires to be examined. We have made a cursory examinatio of the Abridgment Books for three lowland counties from 1781 to 1801, and we have found contain in a single entry the names or descriptions of twenty, thirty, and even forty separate places or pr perties, all situated in one, or at most two parishes. On the whole, it appears to us that when a searc directly against lands is required, the Parish Index would not be found more cumbrous than the prese Index of Places, while it would be more certain. But we doubt much whether either a Parish Inde or an Index of Places can ever be made available, in daily practice, for the purposes of an ordina search for incumbrances. Under the more accurate mode, however, of conducting such a search i the Index of Names which we mean to suggest in the sequel, we expect that it will not be necessary resort to either the one or the other, unless in very exceptional cases.

2. For a search against Persons.

(2.) Great facility, and much saving of time, would be afforded by the proposed Parish Index i making a search in the Index of Persons. The name of the parish in which the lands lie being furnishe to the searcher, he would require to examine in the Parish Index only those references to the Abridg ment which were classified under the name of the person searched against. In this way his searc would be limited to the entries under that name, in one parish only, in place of in the whole county To illustrate the saving that would thus be effected, we have obtained the return, previously alluded t of the number of registered deeds affecting property in the county of Ayr, both in the General an Particular Registers, for the year 1855, arranged in parishes. The total number in the county wa 822. These embraced properties in 47 parishes. In the two largest—Kilmarnock and Ayr—th numbers were 165 and 52 respectively; while in some of the smaller parishes there were none, in other only one or two, and in the majority not more than twelve.

Advantages of Parish Index for that object.

There would, therefore, be obtained by the proposed Index a separate and by no means unimportan advantage, sufficient, in our opinion, to turn the scale decidedly in its favour, as contrasted with th discontinued Index of Places. In fact, by its means the same facilities would be secured, even in search in the Index of Persons, as would result from the subdivision of the whole Abridgment Book into parishes, in place of into counties.

Practicability of adopting a smaller area than parish.

Had it been possible to suggest any equally well-defined and well-known subdivision of lan of smaller dimensions than a parish, we should certainly have preferred to base our proposed Inde of Places upon it; as it is material to the object in view, for reasons which we have already explained to narrow the area of search as much as possible. But there does not exist in Scotland any smalle subdivision having fixed and recognised boundaries—like the town-lands in Ireland, which are 63,00 in number, and have an average area of only 330 acres—and therefore we have been obliged t

In case any parish area is found too large.

rely on the parish as the unit of the proposed Index of Places. Should it be found by experience tha in some parishes, an Index so framed, even although divided into periods of only twelve months, con tains entries so numerous as to make a reference to them by a searcher impracticable within a reason able time, or at a reasonable expense, then, in such exceptional cases, the parish might be divided int one or more registration districts, under an application to be made, in the mode, and with the precaution which we shall have afterwards to suggest, in regard to registration districts in large towns. Th officials in the General Register House, by whom any difficulty of this kind would be first experienced might safely be authorized to originate and carry out the requisite procedure.

County Indexes still requisite.

We have considered whether, as a sequel to these improvements, we could not recommend th discontinuance of the County Index of Persons, seeing that the Parish Index will, in our opinion, be s much more frequently resorted to. But we think that the general County Index of Persons is indis pensable as a means of consulting the Registers where the names of the lands or of the parishes ar unknown to the searcher, and that its compilation should therefore in the meantime be continued.

Indexes should be printed.

Mr Thomson, in recommending a double set of Indexes, suggested also the convenience of thei being printed, and a few copies thrown off for the use of the officials in the Register House, but h does not seem to have contemplated any more enlarged use of the printed copies. We shall ventur hereafter, to point out a way in which we think the printing of all the Indexes, which we strongl recommend, may be made subservient to a more extended benefit.

Inconvenience of interval between ingiving and actual registration.

We may notice in the next place, with reference to providing additional facilities for searching that there is, at present, much difficulty in completing a search in the Registers, arising from th interval of time that must necessarily elapse between the ingiving of a writ, and the entering of it i the Minute Book of the more crowded registers; and still more between its ingiving and its appear ance in the Abridgment. This interval is, of course, periodically increased, especially as regards th Minute Book, by the increased number of writs which at certain periods of the year are given in on the same day for registration. The number of clerks employed in framing the Minute Book cannot b

nddenly increased. In the offices of the General Register of Sasines and of the Particular Register or Edinburgh, it has been found expedient to scroll the Minute Book on loose sheets; and in other Registers a scroll Minute Book has been kept. These loose sheets and scroll Minute Books must be examined by the searchers, sometimes before they have been revised, in order to enable them to complete their searches up to the latest moment; and, when necessary, we understand that access is allowed to the deeds themselves. But there are difficulties and risks in thus referring to the deeds, which are not in use in different offices; and we have had complaints made to us that the system does not work satisfactorily. Latterly, some of the searchers have declined to give a certificate of search for the period during which the Minute Book has not been authoritatively brought up.

Subdivision of Registers will lessen this evil.

The most obvious plan for lessening the evil, both as it affects registration and search, is the subdivision of the Registers into counties, which we have already recommended. The pressure at the money terms would be thereby greatly lessened, and of course fewer irregularities in the working of the machine would occur. As elsewhere explained, too, the interval between the ingiving and the abridging and indexing might thus be shortened, and the use of the Minute Book, as a means of search, to that extent superseded.

Further suggestion to obviate inconvenience.

But we are not disposed to rest satisfied with the partial remedy which this proposal is likely to effect. The question occurs, whether, by means of a well-arranged Presentment Book, to be kept for each county, and to be filled up at the moment of giving in each writ—as was originally intended by Parliament with respect to the minute in the Minute Book—sufficient information might not be afforded to a searcher to enable him with ease and safety to bring his search down to the last moment. We do not think that, under the present mode of describing properties, an attempt could successfully be made, *at the time of ingiving*, to enter in such Presentment Book any description of the property affected by each writ. But there would be nothing to prevent the *parish* being then entered with the names of the parties, and the nature of the deed, which, with liberty to refer to the unrecorded writs when necessary, would, in our opinion, be enough. By shutting the office for the ingiving of writs an hour or two earlier than it is shut for searching, the means of access to the Presentment Book and to the original writs might be rendered more available to the searcher. The short description of the property, when there was one, might be added, in a space to be left for it, at the time the reference to the volume and folio of the Register is filled up.

Presentment Book recommended.

But what would go far to perfect the Presentment Book, and render it available for reference from the moment an entry of the deed is made in it, would be the insertion, in such entry, of the Search Sheet number, hereafter to be explained. This number, assuming the system of Search Sheets to be in full operation, being given to the party searching, he would be able to identify the property without the necessity of any description.

Form of Presentment Book.

The form of Presentment Book which appears to us likely to be most useful, omitting in the meantime any reference to the Search Sheet number, is as follows—

FORFAR.

1862, *January* 2.

rish.	Granter (if any).	Grantee.	Deed.	Hours.	Place in Register.	Short Description, if any, or Search Sheet No.	Signature of Presenter.	Signature of Keeper.
ndee.	Wood, John, Merchant, Forfar.	Rae, Peter, Grocer, Dundee.	* Disposition, 20th Oct. 1861.	1 and 2.	† Book 150, Page 129.	†	‡ John Thomson, Writer, Dundee.	

Presentment Book might be printed daily.

We think it would not be at all difficult, or attended with much expense, to make arrangements for the daily printing of the County Presentment Books, which would not only facilitate the making of search, but might ultimately assist in the compilation of the Indexes. For the purpose of forming an opinion on the expediency and practicability of this arrangement, it is necessary to keep in view what number of writs might, on an average, be probably given in each day for registration in each of the county offices, which we have elsewhere assumed as being likely to be eight in number. The whole writs registered in Scotland for the years 1858–59–60, give an average of 14,405 per annum. Assuming the number of days, during which the offices would be open for business, at 308, the result would be an average of $5\frac{3}{4}$ writs daily in each office. Of course there would be many days on which fewer writs would be presented, but it would be reasonable, we think, to assume that on no day would they probably exceed thirty in any one of the offices.

There would thus be nothing to prevent the Registrar who took charge of the County Presentment Book in each of the offices, from making, at any time when he was not actually engaged in entering writs in the Presentment Book, an exact transcript of the entries of the day in each such book, for the printer. This transcript, after being compared, might, on the shutting of the office, be handed to the printer, who could with ease set it up and throw off copies of it on the face of a folio sheet of paper, by the time the offices opened for business next morning. These printed sheets might be distributed for use in the different registration offices, and copies might be sent to the Searching

* Note (1).—If the deed should be an assignation of a bond, or a notarial instrument, or a writ granted by any other than the party last infeft, the connecting name would be filled up here by the Registrar at the same time that he fills up the blanks in the subsequent columns.

† Note (2).—These entries would be filled up after the deed was registered.

‡ Note (3).—When deeds are received by post, the signature here would be that of the clerk who may open the packet.

Department for the use of the searchers. By having a portfolio for each county in the Search Offic and pasting these sheets into it, a complete copy of the current Presentment Book of each coun would always be at hand, and might be easily and quickly referred to.

Mode of using the Present-ment Book for searching.

It may be said that the information which the Presentment Book would afford would be meag and unsatisfactory, and would necessitate frequent reference from it to the deeds or the Minute Book and it certainly would be so, to some extent, unless the short description, or Search Sheet number, cou be always filled up at once. But the question is, not whether the Presentment Book is equal to th Minute Book, or Abridgment, and Indexes, but whether it would not afford a valuable additional mea of filling up the gap which, as already explained, must always exist between the ingiving of the wr and the completion of the Minute, and Abridgment, and Indexes. It must not be overlooked that th Presentment Book, even in the simple form in which we propose it, would contain the two keys search which are afterwards embodied in the Indexes—the names of parishes, and the names of person The only drawback to its being used with the same facility as the Indexes is, that the names wou not be alphabetically arranged in it. The printing of it, however, would lessen this objection, and other respects facilitate the use of the book; while the circumstance of the *margin* containing th names of the parishes, would render searching in it comparatively easy. A reference to the Regist would be requisite, only where the parish, and the name of the granter of the deed found in the Presen ment Book, concurred with the parish and name searched against—a combination which would scarce ever occur, unless in the case of a deed truly affecting the subject of search.

Further use of the Pre-sentment Book.

The second use we propose to make of the printed sheets of the Presentment Book, is facilitate the preparation of the Indexes of Persons and Parishes. By printing the entries in th Presentment Book with the lines apart, spare copies of it might be cut up and employed as material f the more rapid construction of the Indexes, which ought to be printed at such short intervals as migh be found most expedient—certainly not less frequently than once every twelve months.

We would also recommend that the Presentment or Minute Book of the combined Register Inhibitions and Adjudications should be printed *de die in diem* for use in the Searching Office. Copi of these Books, so printed, might be periodically transmitted to counties, to be used along with th printed Abridgments and Indexes of the Register of Sasines, as suggested in the sequel.

Proposal to shorten the long pre-scription.

While we have thus endeavoured to suggest the means by which the machinery of searching in th Register of Sasines may be made more perfect, we deem it right to advert to one important alteratio in the law, which has been frequently advocated, on grounds of expediency unconnected with ou present inquiry, and which would have a most beneficial effect on the system of searches. We refer the shortening of the period of the long prescription as affecting titles to land. It is too obvious require illustration, that the delay, risk, and expense of searches would be diminished almost in th exact proportion in which the period was shortened. But the subject belongs to a much wider ar more difficult inquiry than that which has been committed to us, and we therefore content ourselv with noticing it only in so far as it has an indirect bearing on registration.

Peculiarities of Inhibition which obstruct searching.

II. The Register of Inhibitions.—The diligence of inhibition has some peculiarities, anom lous in themselves, and productive of much unnecessary delay and expense in searching.

(1.) The period of prescription is forty years.

(2.) The diligence affects all future acquisitions by any party, as well as property belonging him at the date when it is used.

The effect of these two peculiarities is, that if a person purchases a property, and sells it aga within six months, a search must be made against him, by a purchaser or lender, in the Inhibitio Registers, not merely for the six months during which he was proprietor, but also for the precedi thirty-nine and a half years, lest an inhibition may have been used against him within the period prescription.

1. Prescrip-tion should be shortened.

We see no good reason why this diligence, which is often oppressively used, should remain in for for forty years, while, under recent enactments, the very similar diligence of arrestment (attachment moveables) prescribes in three years. Besides the expense caused in searching, cases are of freque occurrence where an old and forgotten inhibition, representing perhaps no just debt, or a debt long sin paid, is found upon a search to be undischarged; a purchaser insists, and is entitled to insist, upon th Record being cleared of it; and great difficulty is often experienced in getting a discharge, in consequen of the party who had used it being dead, or having left the country. We think that a prescriptio of five or seven years would be more advisable than the present rule: at the same time, in order prevent any inconvenience to a party having an interest to keep up his inhibition for a longer period, might be provided that he should have it in his power to give it a new course of prescription, by execu ing it anew against the party affected by it, and recording it again; its preference over subseque inhibitions being, in such a case, preserved to it.

2. Acqui-renda ought not to be struck at.

Neither do we see any public benefit resulting from an inhibition being allowed to affect futu acquisitions. On the contrary, cases of great hardship, and of injustice to other creditors, have arisen o of this provision of our law. Arrestment has no effect except against moveable property actually in th hands of the arrestee at the moment it is laid on; and we think that the law should be similar respects the effect of inhibition on heritable property. The only exception which it might possibly b expedient to admit, is the case of persons who, at the date of registration of an Inhibition, may hold indefeasible right of succession to an heritable property. In these cases it might be expedient th Inhibition should affect the succession, if it opened to the debtor within the period of prescription be now fixed.

If these alterations were made, searches in the Register of Inhibitions would, in the general cas be required only for the period during which a person had actually been proprietor of heritage, alternatively for the shortened period of prescription.

(3.) An inhibition has the effect of creating litigiosity, from the time it is served on the party, though it may not be published *by registration* for a period of forty days after the date of its publication at the market cross, and of its execution. Great danger lies under this peculiarity, which can at present be only partially guarded against by a search in the Signet Office, to ascertain whether inhibition may not have been signeted. It was with a view to this peculiarity that we referred to the Record of Writs passing the Signet in an earlier part of this Report. We recommend that inhibition should in future have no effect until it, or an abbreviate, has been registered, and thus effectually published. 3. Litigiosity ought to be regulated.

A practical difficulty, however, might arise, for which it will be proper to make provision. An inhibition cannot, according to our law, be registered until after it has been executed against the party; and if it were to have no effect till registered, a party against whom it was executed might defeat it, by conveying away his property before the diligence and execution could possibly be registered. There are good reasons why the execution should precede the registration of the writ; and we do not propose to disturb that rule. But to prevent fraud, we have to suggest that a short abbreviate of the inhibition should be entered in the Register prior to its execution against the party, so as to give notice to the public; and that such abbreviate should, from and after the date of such entry, have the same effect as a registered inhibition, provided the writ itself and its execution be registered within a limited time thereafter, such as twenty days.

(4.) On the subject of inhibitions we further recommend, that the present writ, which is unnecessarily long, and barbarous in its terms, should be framed according to a prescribed simple form; and that publication at the market-cross, which is now wholly ineffective as a public notice, and often expensive, should be abolished. 4. Form of writ should be shortened.

(5.) Inhibition at the instance of a husband against his wife (which is a writ not affecting land rights) might continue, as at present, to be registered in the County Register, which is used for expired charges and other such writs; unless it shall be considered expedient to substitute edictal execution and newspaper notices, for the registration of such inhibitions. This would be more effectual for publication than registration; for we find that a search in the Register for this description of inhibition is unknown. 5. Inhibitions against wives.

III. The Register of Adjudications.—If the changes we have recommended shall be made in inhibitions, we would suggest two changes of a similar kind on adjudications. Adjudications.

(1.) As an adjudication, like an inhibition, creates litigiosity from the date of citation on the summons, though there is no publication of the fact till a decreet is obtained and registered, we recommend that a short abbreviate of the summons should be registered whenever it is signeted; that the date of its registration should be the *terminus a quo* of litigiosity; and that the abbreviate should only have this effect, provided the decreet of adjudication shall be registered within a certain fixed time after it shall have been pronounced.

(2.) If the Register of Inhibitions and Adjudications shall be conjoined, the necessity for a forty years' search in that Register would not be removed unless the prescription of adjudications shall be put upon the same footing as the prescription of inhibitions. We therefore recommend that the effect of a summons of adjudication in creating litigiosity, as well as the effect of a decreet of adjudication not feudalized, should be cut off by a prescription of the same number of years as may be fixed as the period within which inhibitions should prescribe. No inconvenience, it is thought, could be occasioned to any one by the establishment of such a short prescription; but if, in any case, the party using the process should apprehend loss, he might be allowed the privilege of keeping his summons or decreet of adjudication in force, by registering of new the abbreviate or decreet as before explained, previous to the expiration of the prescriptive period. Prescription should be shortened.

We have already recommended, but without assigning our reasons, that the proposed new County Register of Sasines should be compiled and kept in the General Register House in Edinburgh, and not in the different counties; and as, in our meetings with the profession in the different districts, we found some difference of opinion to exist on this point, while in general the other measures which we have recommended, including the abolition of the double Register of Sasines, were unanimously concurred in, we now think it right to state in detail the grounds upon which we prefer Edinburgh as the seat of the Register. Detailed reasons for new Register of Sasines being kept in Edinburgh.

Three different courses have been suggested. Different courses suggested.

I. That the new Register should be made up, and kept, in the General Register House in Edinburgh.

II. That it should be made up in each county, and transmitted periodically to the General Register House, for preservation.

III. That it should be made up, and permanently retained, in each county.

I. The preponderance of opinion, among those members of the profession whom we were enabled to meet in the country, was in favour of a Register made up and kept in the General Register House. In some of the towns in which District Registers are at present made up, and kept during the process of compilation, a preference was expressed, though not unanimously, in favour of the Register being made up in the locality, and *either* periodically transmitted to the General Register House, or permanently retained in the country. Opinions and reasons against general, and in favour of local Registers.

The reasons for preferring a local to a General Register were stated to us to be:

(1.) The convenience to agents, residing in the town in which a Register is compiled, of personally handing in their deeds to the registrar, and getting them back from him without trouble.

(2.) The convenience which many of the local registrars afford to agents carrying on business in other parts of the district, by receiving their documents by post, and by running a yearly or half-yearly account with them, for the fees of registration.

(3.) An allowance or discount on the stated fees which, in some districts, the keeper of the Register gives to the agents who record their deeds in the Particular, in preference to the General Register.

(4.) Occasional abatements from the fees, which, in other districts, the keeper gives to the agen for the benefit of the client, in properties of small value.

(5.) The convenience arising in some districts, from the keeper of the Register retaining scroll duplicate Minute Books, which, though unauthorized by statute, and not forming the basis of a sear such as would relieve agents trusting to it from personal responsibility, are found to be of use in maki local searches.

These considerations are all of a professional or personal character, with the exception of No. in regard to which we shall hereafter propose an arrangement equally convenient and more safe, a they do not appear to us to be entitled to much weight in dealing with a matter so important to t whole community, as the Register of the Land Rights of the kingdom.

Objections to plan for local compilation followed by transmission to Edinburgh.

II. As respects the plan of making up the Registers in the country, and transmitting them periodica to Edinburgh for preservation, we think that it ought not to be adopted for the following reasons:

(1.) It necessarily implies the keeping up of a double staff for registration purposes—one in Edi burgh, and another in the districts—which would preclude any hope of making a material reduction expense.

(2.) If the plan of a *County* Register (which we consider indispensable) should be adopted, it wou necessitate the formation of a new establishment in *each* of those counties which are not now the seat o Register, but are included in one of the registration districts.

(3.) The inconvenience and expense of searching both the Register in Edinburgh, and its co tinuation in the country, would be perpetuated.

(4.) In the case of deeds (which are numerous) containing lands in more than one county, at prese recorded in the General Register, it would be necessary to record them at full length in the Regis kept in each county, causing not only increased expense, but a delay in registration, which in ma cases might be productive of serious consequences; whereas, if the whole of the Registers were compil and kept in one General Register House, the deed would be recorded immediately, and only once length, in the 'Sundry Counties' Volume, while the minute of it would be entered at the same ti in the Presentment Book and Minute Book of each county in which any part of the lands lay.

(5.) It would perpetuate the present grievance of delay in framing the Abridgments and Inde which are kept in arrear by the causes already explained. Whereas, if the whole Registers were made in the General Register House, we see nothing to prevent the Abridgments and Indexes being k up, and printed, almost *pari passu* with the Register itself—a consideration of very great importance

(6.) High fees of registration have been kept up, mainly in consequence of the footing on whi the District Registers are at present placed. As the keepers of these Registers draw their emolume from the fees of registration, their interest is adverse to all proposed reductions, which they no do would meet with a demand for compensation.

(7.) The reference now allowed to be made, in deeds entering the Record, to the particular *deser tion* of the same property in deeds previously recorded, although only of recent introduction, is beginni to cause difficulty in the conduct of all Registers, but especially of those kept in districts, and tra mitted from time to time to the General Register House. In the course of our inquiries, we h seen instances of deeds containing such references (without any attempt even at a leading name or d tinctive description, and without the parish being named) sent to be recorded in a District Register a the volume containing the original particular description had been transmitted. In such a case, district registrar can enter no description of the property in his Minute Book, and make no reference a parish on the margin—omissions which, so far as regards a search, render the Minute Book valuel In the sequel, however, we suggest a provision to remedy this for the future.

(8.) We can perceive no substantial benefit likely to accrue to the public in any district, from mere compiling of the Register within it, if each volume, when completed, is transmitted to the Gene Register House. The advantages afforded to local practitioners, by the keepers of District Regist granting to them certain pecuniary favours, and in some cases retaining a scroll or duplicate copy of Minute Book, are more than overbalanced by the national benefit to be derived from all the Regist being made up and deposited in one place.

Objections to plan for local compilation, and retention of Register in the counties.

III. The other plan suggested, that County Registers of Sasines should not only be made up, permanently retained in each county, is open to many of the objections which we have just stated. also consider it inexpedient, on the following additional grounds:—

(1.) All national Registers of Land Rights, wherever compiled, should, in our opinion, be ultima brought together in one locality, and placed under one responsible head, so that immediate and e access may always be obtainable at one place, to the recorded titles of lands situated in every par the kingdom. The general convenience, as has already been proved by long experience in Scotla is best consulted, as regards both registration and search, by such centralization.

Practice and authorities in Ireland and England.

In Ireland, where registration of land rights has also been long established, this principle prev —there being, in Dublin, one General Registry for the whole country. In England the s arrangement was contemplated in the scheme for the registration of land rights, which formed branch of the Report by the Royal Commissioners on the Law of Real Property, appointed in 18 The Commissioners, who were among the most eminent public men of the time, directed their atten to the subject of registration, and the whole of their second Report was devoted to it.

Commission, Law of Real Property, Second Report.

They entered fully into the question, whether, if a Registry were established in England, t should be a consolidated one, made up and preserved in one place, or local Registries placed in cou or districts; and they unanimously reported in favour of a General Register. They stated t reasons thus:—

Second Report, p. 27.

'The reasons which may be stated in favour of district offices appear to be, that in the dis counties they would often afford greater facility, and occasion less delay and expense, in registe deeds and making searches, and in the production of the registered instruments at trials. On the o hand, the objections to District Registers are, that deeds comprising property in two or more dist

must be registered in each district; that expense would be materially increased by separate establishments, not only in respect of the necessary buildings, but because a greater number of officers would be required, and particularly of superintending officers, who must possess considerable legal knowledge; and that disagreement in practice must be expected. These objections appear to us to be conclusive against small districts; and if the districts were large, communication from the distant parts of them with the local office would, in most cases, be attended with more difficulty than communication with London.

'The advantages of a general office are, that the establishment would be attended with the smallest expense; that under a single management, and upon a large scale, there would be a greater probability of obtaining a perfect system of practice, and the evils of variety of practice would be avoided; and that greater facility would be afforded for improvement, both as to the principle and the details of the system. It will appear, by our exposition of the plan, that there are some documents, such as wills and commissions of bankrupt, as to which registration in separate districts would be liable to very great objection. It is obvious that great benefit would be afforded, if all inquiries relating to the documentary title of real property, wherever situated, might be made at one place. Many transactions relating to estates in all parts of the kingdom, and particularly those of magnitude, are conducted in the metropolis. It may be remarked, that the objection which has been urged against a Register on the ground of disclosure, would have less force if the establishment were confined to one office in the metropolis. The principal objection to one general office is the risk, delay, and expense of communication from distant parts of the country. At the time of the Commonwealth, and at subsequent periods, when general registration has been proposed, this objection would have been insurmountable; but there is now such facility and certainty of communication between London and all parts of the country, that transmission to London would be attended with very little risk or delay. As to expense, it may be objected that the charges to be incurred for registration by persons at different distances from the office would be unequal. We think that provision might be made for equalizing these charges. The Post Office might be made the medium of transmission directly to and from the Register Office; an average charge, which might be made very moderate, might be imposed on registration, out of which the expense of transmission might be defrayed by the Register Office. The expense of an agent for making searches will scarcely ever be necessary.

'It appears to us, that the reasons in favour of one general office for England and Wales greatly preponderate. We have therefore adapted the plan we propose to a Metropolitan Register.'

We need scarcely notice that, since the date of that Report, the facilities for the cheap and safe transmission of deeds by post have been immeasurably increased by the establishment of the penny-postage and of the book post. The safety of either mode of transmission has been shown in an earlier part of this Report.

(2.) The plan of purely local Registers in counties implies either that the General Register House, and the supervision which its officers at present exercise, shall be abolished; or that the head establishment shall still be kept up for the purpose of supervision only.

As to the former alternative, we are of opinion that, if the Registers of Sasines were made up and retained in the different counties, without the supervision and strict control of a head establishment, the Registers would very soon degenerate, and become as faulty as they were before the present improved system of regular transmission to Edinburgh was introduced. Memoria[1] on Public Records, 1788.

Again, if the head establishment were retained for the purpose of supervision only, the expense created by the double establishments would render an early reduction of fees impracticable.

(3.) In many counties no provision exists for the safe custody and preservation of a Register of Sasines. In Edinburgh the General Register House has been constructed, and every possible provision has been made in it for the safe custody of the Registers. No doubt, fire-proof buildings might be erected in each county for the custody of the Register (which would require extensive accommodation, at least in some of them); but this would occasion an expense to the county which, in our opinion, would not be counterbalanced by any advantage; while the national central repository, already provided at a great expense, would be rendered of comparatively little use.

(4.) The system of abridging and indexing the deeds registered, which, in the case of rural property, we consider essential to afford adequate facilities for search, would, if the Registers were local, occasion a greatly increased expense. Such a staff of men, carefully trained to the work, would be required in each county, as would probably not only prevent any reduction in the expense of registration, but materially increase it. We doubt the expediency, in any case where it can be avoided, of entrusting a task so delicate as that of abridging and indexing the Registers, to the superintendence of the keeper of a County Register, or to clerks appointed by him. It must be kept in view that the business of registration in a county town would not in general be so remunerative as to induce an intelligent and experienced professional man to devote himself exclusively to it.

(5.) If the earlier volumes of the Register of the district, which are at present in the Register House in Edinburgh, were to be retained there, a search would, for the next forty years, require to be conducted, partly there, and partly in the country.

(6.) The expense of searches generally would be large, as it would be necessary to search the Sasine Register in the county, and the Register of Inhibitions and Adjudications in Edinburgh; while the trouble and expense of searches in cases of lands lying in more than one county would be excessive. Moreover, there are already provided by Government, in the General Register House, official searchers, well trained to the peculiar duties entrusted to them; but there are none such in the counties. The business of searching in a County Register would, in many parts of Scotland, afford no sufficient employment for even one professional searcher. To appoint well-trained searchers in each county would be very expensive.

(7.) Were the Sasine Registers to be kept permanently in the counties, no new convenience would be given to country agents except in the county towns; while Edinburgh agents would be placed under a disadvantage by being obliged in all cases to send their deeds by post to the country for registration. As regards searches, the inconvenience to Edinburgh would be of the same kind as is now experienced in those county towns where District Registers exist, although much greater in extent. But if any

great public benefit were to be derived from establishing the Registers in counties, we should not think it necessary to inquire whe her the convenience of practitioners in the metropolis, or of those in the counties, should be chiefly consulted. Being decidedly of opinion, however, for the reasons already stated, that the public interest points to one central Register, we think the great inconvenience which a different system would occasion to the metropolis is a fair element of consideration, and is the more entitled to weight when it is kept in view that a large proportion of county conveyancing is entrusted to agents in Edinburgh, and that a number of loans on, and completion of titles to, estates situated in more than one county, are also managed in Edinburgh. The returns made by the keepers of Registers, under the Act of Sederunt 1849, although imperfect, are sufficient to prove that the proportionate number of writs affecting heritable property of a value above L.2000, which are registered in Edinburgh, is much greater than those registered in any of the District Registers in Scotland.

Substitute proposed, by giving counties the benefit of Abrigments and Indexes for purposes of search.

Farther, we are of opinion that an arrangement far more advantageous to the country than the making up or retaining a District Register, might be made by transmitting to each county town, and probably to some other large provincial towns, printed copies of the Abridgments of the Register of Sasines, of their Indexes, of the Indexes to the combined Register of Inhibitions and Adjudications, and of the proposed Presentment Book. These would afford the means, in each county, of obtaining every necessary information as to titles to land, where no formal search was required. They would also give to local practitioners the same materials for making a search as are possessed by the official searchers, except the volumes of the Register itself, which seldom require to be referred to. This measure would occasion very little extra expense. The Abridgments are already printed, and the few extra copies required would cause only a fractional addition to the expense. We have already suggested, for other reasons, that all the Indexes and the Presentment Books should be printed; and the expense of a few additional copies for the above purpose would scarcely be appreciable.

Objection of too great publicity.

We do not expect that exception will now be taken to the limited increase which we propose in the publicity of the Abridgments and Indexes, on the ground of improper and undue exposure of the state of individual property, as respects family arrangements or burdens. As regards the former (which is a purely exceptional class), such disclosure may always be avoided by recording a notarial instrument containing the feudal part of the deed, and omitting the details of the family arrangements. And as regards the disclosure of incumbrances to those having interest to inquire into their existence, we consider that it is the very purpose of the Register to afford such information; and that every reasonable facility should be given for its being obtained. At present bankers and others get periodical returns of all incumbrances which enter the Registers, and there is nothing to prevent any one who chooses, from printing and selling publicly for his own profit, an abstract of every deed recorded, just as is done with regard to the Register of Protests of Bills. The limited facility of access to the Abridgments which we recommend might even tend to discourage general publication, and we have no reason to anticipate that impertinent curiosity would tempt any one idly to inquire into the affairs of others. It has been found by experience in Scotland, in regard to the Register of Wills, to which any one may have access in the Commissary Clerk's Office on payment of a fee of 1s., that no references are made to them from such motives.

Experience in Ireland.

In Ireland the result has been similar. In a recent Report to the Lords of Her Majesty's Treasury, by Mr Hardinge, Barrister-at-law, who has long been connected with the Irish Landed Estates Record Office, we find it stated that the office has been 'a public office for registry of marriage settlements, jointures, mortgages, sales, and assignment of real property, before, and for 100 years after, the establishment in 1707 of the present Registry of Deeds. . . . . And although these records have been frequently referred to, and copies taken by individuals deriving right and title under them, I have not known, in forty-five years' experience, an instance where mere curiosity influenced any one to refer to a single deed.'

Opinions of English Commissioners on Real Property.

The policy of giving such facility of access, as we now recommend, to Registers of Land Rights, was anxiously considered by the English Commissioners, whose Report we have already noticed. They found, from the evidence of many professional men, bankers, merchants, and others examined by them, that the great preponderance of intelligent opinion was in favour of an open Register; and on that evidence, as well as on grounds of general policy, they gave to it the sanction of their high authority. Their arguments are very clear and forcible; but we shall content ourselves with quoting a part of their concluding remarks. After stating that 'the objection to a Register which has been most frequently urged, and appears to be the most popular, is, that it will occasion an exposure of private transactions,' the Report alludes to the possibility of establishing restrictions on the right of access to it. But the Commissioners do not recommend the adoption of such restrictions. On the contrary, they say: 'We are of opinion, however, that the objection to an open Register, on the ground of disclosure, is entitled to little regard. We are satisfied that the information which will actually be obtained, except by persons requiring it for just and useful purposes, will be very limited. Few persons, except those who may have an interest in the estate, will have a sufficient motive to incur the trouble and expense of the requisite search; and we have not found that evil has resulted from the disclosure of any of the numerous transactions relating to real property which are at present recorded. No serious complaint has been made of the facility with which wills can be seen at Doctors' Commons; and we believe that this objection has never been urged against the Registers in Middlesex and Yorkshire, or any of those which are established in other countries;' and afterwards they add,—'If the disclosure were likely to be considerable, we are satisfied that, whatever evils might arise from it, would be greatly overbalanced by the benefits of a Register. However, without reference to such benefits, there seem to be strong grounds for contending that, upon the whole, the disclosure would be productive of more good than evil; but we are sensible that this point is one upon which a difference of opinion may be entertained.

Second Report of Commissioners, Real Property, p. 21.

Second Report of Commissioners, Real Property, p. 22.

'To enter into this question: It is obvious that no inconvenience can result from the disclosure of sales; because in their nature they are public transactions.

'The cases in which objection may be made to disclosure are, we conceive, confined to three classes: ecurities for money; settlements and family arrangements; and defects of title.

'We are of opinion that, upon the whole, the disclosure of securities would be productive of more ood than evil.

'Certain information of the state of property would advance legitimate credit, and facilitate the eans of borrowing money on good security. If it could be ascertained that an estate was unincum-ered, the owner might probably be able, without difficulty, to obtain an immediate loan upon his ersonal security. The reasons for obtaining money are so various, that the fact of the existence of a ortgage is no impeachment of the credit of the proprietor of an estate.

'To prevent fictitious credit would be an important benefit to the public.

'The law at present requires annuities and judgments (the securities which parties are most willing to disclose) to be recorded; and it is not unworthy of remark, that the provisions which, upon e establishment of the present Registers in this country, were made to prevent inconvenience from sclosure, by requiring only the registry of a memorial, without showing the object of the deed, have en disregarded; for (as we are informed by the Deputy Registrar of Middlesex) memorials of mort-ges are very rarely registered, in which the true nature of the transaction, and the amount of the oney secured by it, are not expressly stated.

'The fear that a Register would have an improper effect upon commercial credit, appears to quire distinct consideration.

'Generally speaking, a large proportion of the property of a trader does not consist of real estate; d although the knowledge, that he is the owner of unincumbered landed property, would add to the lidity of his credit, yet the raising of money upon the security of such property would be no proof the diminution of his wealth, because it might be raised for the purpose of being employed in his siness.' And again,—'The benefit which bankers would obtain from a Register should not be over-oked. Their profits materially depend upon the validity of the securities upon which they lend the oney in their hands; and the information which they would derive from the Register would afford them lvantages in this respect. Report, Real Property Commissioners, p. 23.

'The experience afforded by the registry of the documents relating to certain important species of mmercial property, as shipping, and property in the colonies, and to real property in the great trading unties of Middlesex and York, may be thought sufficient to prove that registration has no injurious fect upon commercial credit; and a deliberate opinion that a General Register, affording complete sclosure, would be beneficial to commercial credit, has been transmitted to us by many eminent nkers and merchants of London, whose answers to our questions will be found in the Appendix to is Report.'

We recommend, as the means of giving effect to these views, that the fees to be paid for access to e printed copies of the Registers, transmitted to the various counties, should be of such reasonable nount as to repress any use of the privilege for the mere gratification of curiosity, but not to prevent y one having legitimate interest from availing himself of their use. The fees should be accounted r to the Lord Clerk Register's department in the General Register House; and we have little doubt ey would greatly more than meet the small extra expense of throwing off additional copies of the bridgment and Indexes.

We have already, in our suggestions upon searching, alluded to the introduction of what we have lled a 'Search Sheet,' as a measure which appeared to us of much importance. We shall now explain e plan which is proposed. Search Sheet.

The idea of a 'Search Sheet' suggested itself to us when considering a proposal to establish an ncumbrance Sheet,' contained in two letters, written by a gentleman who adds extensive banking know-lge to professional experience as a conveyancer and law-agent. These letters he communicated to us, d we think it right to quote them in full: 'Referring to our conversation some days ago on the subject *incumbrances* over heritable property, I regret having been unable to find the draft of my letter on that bject to the Deputy Keeper of the Signet, at the time when much discussion had arisen as to the pense of searches of incumbrances, and the great difficulty of avoiding error in them, especially when operties have been much subdivided. I shall therefore now re-state the suggestions contained in that tter; and if these are thought worthy of serious consideration, they can easily be further developed. y plan was to supersede altogether the necessity for searches, as regards incumbrances voluntarily eated, and thus not only save perhaps L.5 on an average for every loan, purchase, or transaction, how-er small the property, but also avoid the risk of error, which searches, however carefully made, can ver exclude. For this purpose, I would make every deed which forms the title of investiture, carry th it the evidence of its own incumbrances, just as a ship's register exhibits, by an endorsement, y incumbrances affecting the ship, or a policy of life assurance those created over it. Suggestion of an Incumbrance Sheet.

'Let us suppose, therefore, an enactment that, from a day fixed, all deeds constituting the title of heritable property (to be written on paper or parchment, of uniform size) shall, when registered, ve attached to them by the registrar, a leaf of paper or parchment (as the case may be), to be called e "*Incumbrance Sheet*," authenticated by him, and having two columns,—one for incumbrances *created*, d the other for those *discharged*. Let it be further provided, that all deeds, when registered, shall ve a number endorsed on them, above the title, corresponding with their number in the Record, and at all *reference* to them be by the numbers only, not by pages of the Register as at present. Then, pposing a proprietor to effect a loan, his title of course will be transmitted to the lender's agent, who, ien the bond is completed, will present both it and the deed of the borrower's investiture,—the former be recorded, and the latter to have entered, by the registrar, on its incumbrance sheet, the date of record-g the bond, its amount, and number in the Record. Of course, it would be enacted that the registrar ould not record any bond or other deed creating an incumbrance, unless the granter's title of investi-

ture were presented along with it to be marked as above, and the same with regard to any discharge of incumbrances. Thus it would be infallibly seen, from merely inspecting a progress of titles, what voluntary incumbrances, if any, affected the subjects after the date of the new system coming into operation; and only a search in the Registers of Inhibitions and Adjudications would be further requisite, which, if only one Register of these were kept for all Scotland (as ought to be the case), would be comparatively inexpensive. No doubt, until the lapse of forty years from the introduction of such a system, searches must be had for the previous period so far as to make up a prescriptive term; but such period would be yearly diminishing, and as a search to some extent already exists over most properties, the connecting link, when supplied, would serve once for all.

'For attaching and authenticating the Incumbrance Sheet, a fee of 2s. 6d. might be charged; but for future entries in it by the registrar, which would only extend to one or two lines, the charge would be covered by that for recording the deed so entered.'

In the second letter he adds: 'In writing you, I omitted to notice the case—which, for a time, would be of frequent occurrence—of bonds, etc., given in to be recorded over properties, the title of investiture of which has already been recorded, and therefore no Incumbrance Sheet attached to it. But this would be provided for, by the statute declaring that (as in the case of investitures dated after the new scheme comes into operation) the borrower's title should be produced along with the deed creating any incumbrance, and should then have an Incumbrance Sheet attached to it,—the registrar in each case, besides authenticating the sheet, dating his authentication on the investiture deed, so as to show *when* the Incumbrance Sheet was attached; and then it would follow, that if any progress of titles were produced, after the new system came into operation (but dating before that period), for the purpose of examination by a lender's or purchaser's agent, and no Incumbrance Sheet be found attached to the subsisting deed of investiture,—it would follow, I say, necessarily, that no incumbrance had been created or recorded after the date of the new system, and therefore a search would only be requisite up to that date.'

Idea suggested valuable, but plan imperfect.

The general idea suggested in these letters is a very valuable one. It would unquestionably be of importance that every title should carry with it at all times authentic evidence of the property being entirely free from debt, or (as the case may be) of its being subject to certain specified burdens. But it would be still more important, that the title should, in addition, carry with it full evidence of the state of the investiture. It was the former object only that was contemplated by the gentleman who communicated to us these letters; but we have no doubt he would join with us in thinking any measure imperfect which did not also secure the latter. Looking even to a loan transaction, the measure would be incomplete, unless its effect were wholly to supersede a search. A lender requires to satisfy himself not merely that there is no prior mortgage, but that there is nothing to invalidate the absolute title of the borrower. A search for forty years, therefore, would be quite as necessary after the adoption of the proposed 'Incumbrance Sheet' as it previously was. This would not, however, be the case if the Search Sheet contained evidence of the state of the borrower's own title. Were it, then, possible to extend the scheme in this way, the benefit would not only be complete as to loan transactions, but would be extended to those of sale.

Improved plan.

In the hope of accomplishing both objects, we have endeavoured to improve upon the suggestion by substituting for the 'Incumbrance Sheet' a 'Search Sheet,' in which every deed which enters the Record, whether creating a redeemable or irredeemable right or burden, should appear, from an entry to be made in the Search Sheet by the registrar at the time of registration. Our original view was, that the proposed 'Search Sheet' should not be attached to any one deed, but should form a separate part of a progress of titles; and, to prevent the possibility of fraud or forgery, we intended to propose that, when any deed was presented for registration in the Register of Sasines, the Search Sheet should be presented along with it, that a minute of the deed might be entered in it; and that, at the same time, an indelible stamp, certifying the fact, might be impressed on the deed entered. We also contemplated, in order to provide against the accidental loss of the principal sheet, as well as for other reasons, that a duplicate of the Search Sheet should be kept in the General Register House, written simultaneously, and afterwards indexed. By these and other subsidiary arrangements, we hoped it would be possible to ensure that every proprietor of land in Scotland, great or small, should have at all times *in his possession* a document—obtained at a mere trifle of expense—superseding the necessity of making a search on the occurrence of every transaction, and furnishing up to the latest moment full official proof of the state of his title, and of the burdens which might affect his property.

As originally proposed.

Practical difficulties.

But some practical difficulties in the working of the scheme in this form, have, on further consideration, presented themselves to us, and have forced us to consider the propriety of modifying it. The result has been, that although we do not see our way to a principal Search Sheet, containing evidence of the position of the property up to the latest date, being at all times ready for use in the hands of the proprietor, a vast improvement on the present system of search, as regards expense, despatch, and certainty, might be accomplished by means of slightly varying the plan proposed.

The chief of those difficulties to which we have now referred, is one that would have affected the plan suggested in the letters before quoted, equally with the extension of it as first contemplated by us. It is this—that in various transactions, especially in cases of postponed securities, the party transacting with a purchaser or lender may not have in his possession the titles, and the Search Sheet. These titles, when a proprietor effects a first loan, are frequently handed over to, and remain in the custody of, the lender or his agent; and in that case the lender of a second loan requires to borrow and return the titles. But if a proprietor, after effecting a first loan, wished urgently to effect a second, or to sell his reversion; or if the holder of a second bond or mortgage required or was asked to assign his security, there might, under various circumstances—which, although exceptional, are not unlikely to occur—be difficulty in procuring the 'Search Sheet' at the moment it was wanted, which would prevent the registration of what might be an important deed. Practitioners are well aware that any obstacle of this kind, occurring to prevent or even delay a loan or sale, might be attended with very serious loss, and would at all events occasion inconvenience and expense.

Another difficulty might also have occurred in the cases of adjudgers for debt, and granters of *post obit* bonds, none of whom, in ordinary circumstances, have access to the titles of the lands affected by their diligence or deeds. But as to these it is unnecessary to go into detail. The plan we have now to suggest seems to us to avoid all such difficulties.

Improved plan, as now recommended.

The plan which we recommend is, that on and after a certain future day to be fixed, there should be kept, in the sub-office of each County Register in the Register House in Edinburgh, a book, in the successive volumes of which should be contained a Search Sheet, applicable to every property situated in such county. As soon as any deed, describing a property for which no 'Search Sheet' has yet been provided, is sent in for registration, one of the pages in this book should be set apart, in all time coming, for the Search Sheet of this particular property. In this page, or its continuation, should be entered a short minute of all future deeds affecting the property, or any part of it, as these are successively presented for registration.

The Search Sheet thus opened, should, in the first place, have prefixed to it, by the registrar, a symbolical marking, consisting of three elements, viz., the county, the year of registration, and a running number, by which marking the particular 'Search Sheet,' as well as the property contained in it, should be distinguished in all time coming. Thus, the first sheet opened in the Register for the county of Forfar, would be marked 'Forfar $\frac{1863}{1}$,' and the next, 'Forfar $\frac{1863}{2}$,' and so on till the end of the year 1863,—the year and running numbers being written in *words*, in place of figures, to provide against risk of error. In the year 1864, a second series would commence, 'Forfar $\frac{1864}{1}$,' to distinguish the Search Sheets of that year; and, in like manner, a new series would be commenced every subsequent year. We propose to call this symbolical marking the 'Search Sheet Number,' and we mean it to form the distinguishing symbol, not only of the 'Search Sheet,' but of all future deeds affecting the property to which it applies. After a Search Sheet has once been opened, we think it ought to be made an imperative condition of registration, that this symbol should be stated *in gremio* of every subsequent deed affecting the property, immediately after the description, in some such form as the following:—'The Search Sheet Number of which Lands is Forfar, Eighteen hundred and sixty-three, number One.' The same words ought to be also embodied by the registrar in his certificate of registration upon the deed.

On the page set apart in the volume of Search Sheets for any property, and having prefixed to it the Search Sheet number, the first entry should be a copy of the full description of the property, transcribed from the first deed sent in for registration, or from any prior deed on the Register which may be referred to for such full description. The second entry on the page (leaving between the first and the second a suitable break) might be the abbreviated or short description of the same property, if any such shall have been adopted and declared in the titles to be the one by which the property is to be known in future. The third and subsequent entries ought to be the minutes of the first and of all future deeds presented for registration (unless in the exceptional cases after mentioned); and as these minutes would require to state only the character of the deed, the names of the granter and grantee, and the date of its registration, the process would be short, simple, and inexpensive. The making of these entries in the Search Sheet should be an absolute *condition* of the registration of the deed, and should be specially mentioned in the certificate of registration. The deed itself should likewise, at the same time, have written upon it by the registrar (at the top of the first page) the Search Sheet number of the property, so as to show at a glance to any one inspecting it, the Search Sheet to which it relates.

The expense of each such entry (after the copy of the descriptions, which might be charged per sheet, has been completed) should not exceed 1s. to 2s. 6d., according to the graduated scale elsewhere recommended. But any such trifling expense would be more than counterbalanced by the Search Sheet in some cases superseding entirely, and in others curtailing the length of, the inventories of titles now in use. In most cases it would be enough that a short reference should be made in the conveyance to the deeds entered in the Search Sheet, or to such of them as were either to be delivered or made forthcoming to a purchaser. For facilitating such reference, we suggest that the entry of every successive deed in the Search Sheet should be distinguished by a running number.

Form of Search Sheet. Appendix, No. V., pp. 65, 66.

In order to enable the plan now suggested to be more easily understood, we have thought it advisable to give, in the Appendix, examples of several such Search Sheets, applicable to the supposed circumstances of a small property in Forfarshire, the history of which, and of several parts of it given off to purchasers, is traced from 1860 to 1866. It would be easy to point out more complex entries, which will occasionally be required in recording the transfer of land; but our purpose in giving these examples has been to illustrate our general meaning, and not to solve all the difficult questions of practice which we are aware will attend the working out of this, as of every other new system. All such, however, may be safely left to the intelligent officials of the Register House, who have at present an equally difficult and responsible duty in superintending the preparation of minutes and abridgments.

The gradual introduction of the measures we have recommended in the previous part of this Report, would afford the best opportunity for adopting the Search Sheet in the first instance in one or two counties, and from time to time extending it to others. It is fortunate that the transition from the old to the new system could thus be rendered gradual, for the risk and labour which would attend its simultaneous adoption throughout the whole of our Registers might endanger its success.

Appendix, No. V., pp. 65, 66.

The examples in the Appendix suggest to us the necessity of giving one explanation. It would be necessary for a person purchasing any of the subdivided properties described in the Search Sheets Forfar $\frac{1863}{4}$, Forfar $\frac{1865}{105}$, or Forfar $\frac{1865}{125}$, to insist on seeing the Search Sheet, Forfar $\frac{1863}{1}$, brought down to the date when the new Search Sheet applicable to such subdivided property was opened, and eventually to the date when the renunciation of the heritable security, subsisting at the time the subdivisions took place, is registered. The purchaser of the property described in the Search Sheet, Forfar $\frac{1865}{125}$, would also require to see the Search Sheet, Forfar $\frac{1865}{105}$. In short, the purchaser of every property would require, when there was not a forty years' progress within one Search Sheet, to see the previous Search Sheet or Search Sheets in which such progress would be found recorded.

How to be used.

From this explanation of the proposed Search Sheet in its simplest form, it will be seen that, by turning up the volume containing it, the exact state of the title to the lands described, and the existence of any burdens affecting them, subsequent to the date at which the Search Sheet commences, might at once be ascertained. The result, so far as searching is concerned, would be the same as if a separate Register had been kept, not for each County or Parish, but for each property. We think it would be cumbrous and expensive to construct separate Indexes to the Search Sheets, and we do not consider them to be necessary. The Search Sheet number should be added to the short entry of every deed in the Abridgment Book, and the Indexes of the Abridgment Book would thus afford the means of at once turning up the Search Sheet of the property.

Would render possible a farther improvement in Indexes.

Were the system of Search Sheets in full operation, we anticipate that a farther very important improvement might be made on the system of Indexing. We have proposed (p. 19) the establishment of parish Indexes, in the form which appears to us best adapted to limit the area of search, consistently with the present mode of Registration and Abridgment. But if every property shall hereafter come to be distinguished by a Search Sheet number, it will be easy, by the insertion of that number in the Parish Index, as a part of the reference, to realize at once all the benefits of the most exact and reliable Index of Places, without its disadvantages.

Mode of commencing a Search Sheet.

With regard to the mode of commencing a Search Sheet, we are of opinion that, whenever the first deed or writ affecting any property, which is presented for registration after the date fixed by statute, is not an absolute disposition, but a bond or an adjudication for debt, it might be expedient to commence the Search Sheet, not with such deed or writ which only creates a burden on the property, in most cases of a temporary character, but with the last preceding absolute title on the Register. For this purpose, it would be necessary to require the presenter of such deed or writ to produce an official search from the date of the last absolute disposition, if he has one, or to procure one if he has it not, so that the Search Sheet should commence with an absolute title to the property, and then show all burdens which may have been created subsequent to the date of that investiture. In such a case the writ should be registered without delay, but the registrar should be entitled to cause the search to be made if the party delayed it, so that the Search Sheet should always be opened before the writ is returned to the ingiver.

It would only be at the commencement of the new system that this requirement would impose any extra expense on parties using the Register; and it might be advisable, in order to alleviate the hardship, to provide that the burden, although it cannot be a heavy one unless when affecting small properties, should fall not on individuals, but either wholly or partially on the general surplus fund in the Register House.

Where a property comes to be subdivided.

In cases where a property has come to be subdivided or to be sold in lots, the first conveyance of each such subdivision or lot would of course require to be entered, not only in a new Search Sheet to be opened for the subdivided property, but also in the Search Sheet of the entire property which was current at the date of such subdivision or sale. But in the entries of the conveyances of such subdivisions or lots in that sheet, a special reference should be inserted to the Search Sheet number by which the new Search Sheet, opened for each such subdivision or lot, is to be distinguished.

Again, in opening the new Search Sheet, which would thereafter alone be applicable to any such subdivision or lot, the first entries in it should be—(1) the symbol of the Search Sheet applicable to the entire property, before it was subdivided or lotted; (2) the description of the subdivision or lot; and (3) the minute of the conveyance by which the first absolute right was created in such separate property. In this new sheet alone, all future conveyances or burdens affecting the subdivision or lot would be entered.

Duplicate should be issued.

To confer on the system of 'Search Sheets' now proposed its full practical efficacy, it would be requisite to provide that an authenticated duplicate of it should be issued, to form part of, and to pass from hand to hand with, the progress of titles. Such a duplicate could be made for a very trifling fee (little more than a copying fee), and thus an official record of the state of the registered title, and of the registered burdens affecting any property, authenticated to the date of the registrar's last certificate, would soon be in the possession of every proprietor of lands, or of a house however small, and would be available to him in cases of sales or loans. When these occurred, this duplicate might be transmitted to the Keeper of the General Register, and a certificate endorsed upon it, and also upon the principal, —not costing more, perhaps, than 2s. 6d.—certifying whether or not any deed had been entered on the principal Search Sheet since the date of the last entry in the duplicate. Such a certificate, corresponding to the present continuation of a search, might, with ease, be procured by parties in most parts of Scotland within twenty-four hours, in place of the present dilatory and expensive plan of searching.

Securities against forgery.

In order to secure against frauds or forgery, these duplicates should be uniformly written on office paper, having the water-mark of the Register House. No entry should be allowed to be made either on the principal or duplicate except by the registrar or his clerk; and every entry should be authenticated by the signature of the registrar, and bear, in words, the date of such authentication, so as to show to what date the Search Sheet has been brought down.

To provide for the case of an authenticated duplicate Search Sheet being lost, the registrar should be authorized to issue a new duplicate, distinguishing it by a prominent mark or stamp, as being a second or third duplicate. When a new Search Sheet requires to be opened for a sub-feu, or for a plot of ground forming only a portion of the lands entered in a previous Search Sheet, a duplicate (or, as one of us prefers, a certified copy, marked as a copy) of such previous Search Sheet, up to the date when the original property was thus subdivided, might, if required, be delivered to the feuar or purchaser.

It would be of importance, for the full and beneficial working of this scheme, that the duplicate 'Search Sheet,' intended to accompany the progress of titles, should in practice be exhibited to the registrar, at the registration of every deed affecting the property, so that a minute of such deed might be at once entered upon the duplicate. We recommend this, not only because it would be of

value that the duplicate Search Sheet, accompanying the progress, should at all times show the latest recorded deed that affects the property, but because its exhibition to the registrar would facilitate the entry in the Presentment Book, and the minuting on the principal Search Sheet, of new deeds sent in for registration. But for the same reasons that influenced us in abandoning the idea of the principal Search Sheet being issued to the proprietor, so as to form an essential part of his title, we cannot recommend that such exhibition of the duplicate Search Sheet should be made an absolute condition of registration.

NOTE.—Up to this point both the Commissioners who sign this Report are entirely agreed as to the form and uses of the proposed Search Sheet and its duplicate, and they join in strongly recommending it for adoption. But one of them is desirous to suggest some further provisions, which appear to him calculated to promote the beneficial working of the measure. These suggestions will be found in an addition to the Report, to which reference is made. The other Commissioner would simply state that his inability to concur in the views embodied in the postscript arises from his apprehension—(1) that the system would, by their adoption, be rendered too complex; and (2) that, as the *duplicate* cannot be made entirely reliable, there would be an increased risk of error were it stamped with undue importance.

Benefits of the scheme.

The benefit conferred by this measure on the proprietors of land and on lending capitalists would not in the first instance be so great in Edinburgh and Glasgow, and a few other large towns, as it would be throughout the rest of Scotland. In these large towns, it has for many years been the practice to insist on the production of searches before the completion of all important transactions in land or house property, so that, in most cases, searches of incumbrances, and continuations for longer or shorter periods, already exist. In any new transaction affecting such property, if the search, or a notarial copy of it, is in the possession of the proprietor, it is only necessary to bring it down to the most recent date. But even in such cases, we anticipate that the advantages of lessening expense and time required to obtain information as to the state of the title would be felt as a boon; while we are satisfied that the Search Sheet and its duplicate would furnish a far more reliable assurance than the most careful search under the present system.

To the rest of Scotland, we look on the Search Sheet as likely to be, from the commencement of the new system, of the greatest advantage. Without materially adding to the expense of registration, it would tend to introduce generally the practice of requiring authentic evidence of the state of the title, and of incumbrances; and would render fully available the benefits which were intended to be conferred on the community by the establishment of our Registers of Land Rights.

What would be superseded by the Search Sheet.

In the course of a short time, the plan now recommended, if successful, would probably supersede the necessity for any establishment of Official Searchers, and effect a saving in that department of an expense which amounted, in 1860, to L.2405.

We do not propose, however, that the 'Search Sheet' should supersede the Abridgments and Indexes of the Records; for these are indispensable, not only as a key to the Records generally, but for enabling searches and investigations, other than those having reference to sales or mortgages, to be made. Moreover, we have proposed that they should form a key to the Search Sheets. But we do not doubt that the universal use of the Search Sheet would ultimately render unnecessary the present 'Minute Book;' for, if the Abridgment and Indexes could be brought up yearly, or at still shorter intervals, a 'Presentment Book,' in the form which we have suggested, would probably be sufficient for all the purposes of search during the intervening period.

Adoption of Search Sheets in royal burghs.

In royal burghs, to the peculiarities in which we shall immediately advert, the 'Search Sheet,' were it to succeed according to our expectation, would be of the utmost importance. It would remove the great difficulty of identification of property by a person not cognisant of the locality, and would show every change of ownership of the property, and every burden affecting it, however vaguely the description might be expressed in the titles and in the Register; while the Search Sheet number would facilitate search and reference. In the course of years, even small burgh proprietors would thus become possessed of a full search, without any appreciable addition to the expense of registration. Were such a change effected, the chief reason which has led us, in a subsequent part of our Report, to treat the case of burghs as an exceptional one, and to recommend that the Burgh Registers should, for the present at all events, remain in the localities, would be obviated, and the way be paved for the ultimate transfer of the Burgh Registers to the General Register House in Edinburgh, without injury to the locality. Such a removal would be more consistent with the national system of registration we have recommended, than the maintenance of separate Burgh Registers.

We recommend, however, that some time should be allowed to elapse before the adoption of the Search Sheet in burghs. It appears to us to be of importance to the success of the measure, that it should be introduced, and conducted for a time, under the immediate superintendence and control of one principal officer in the General Register House, so as to ensure, from the first, uniformity in its working, and to admit of the gradual maturing of its details. After the lapse of a few years, it might, if successful, be introduced into the larger burghs, in which a careful and effective system of registration at present exists; and after being thus fully matured and generally understood, it might, under such precautions and safeguards as might suggest themselves to the heads of the General Register House, be extended to every burgh in which a Register of Sasines is kept.

Correction of inadvertent errors in Search Sheets.

Finally, on this head we would recommend that the Deputy-Clerk Register should have conferred upon him the power of correcting any error that might be found to have inadvertently arisen in entering a deed in a wrong Search Sheet or duplicate. Upon such error being discovered, a written notice, specifying the nature of the erroneous entry, and of the alteration proposed to be made, should be given by the registrar to all parties having interest in the Search Sheet in which the error may have been found, and to those having interest in any other Search Sheet to which it may be proposed to transfer the entry. The Deputy-Clerk Register, after hearing the parties, and being satisfied

of the sufficiency of the notice, and that the entry was truly erroneous, and that no prejudice could arise to any party from its being corrected, might give orders for the necessary amendments to be made.

Registers of Sasines in Royal Burghs.

ROYAL BURGHS.—We have now to consider the Registers of Sasines in Royal Burghs, which, as mentioned at the outset of our Report, are of an exceptional character, and require to be provided for separately.

Lands (in which term we include buildings) situated within the territory of a royal burgh, are almost invariably held by a tenure different from that of other lands. This holding is known as Burgage Tenure.

These burgage lands hold directly of the Crown, and the investiture flows from the Magistrates, as administrators for the Crown. The interjection of a mid-superior between the Crown and the vassal in possession of the lands, forms no part of this mode of tenure. A simple form of deed, therefore, suffices; and the titles are registered in a Register kept in the burgh by the Town-Clerk.

There are seventy-one royal burghs in Scotland, and all of them, we believe, have Registers for deeds of burgage tenure, except Dornoch, Musselburgh, Anstruther Easter, Kilrenny, and Inverary. As we have already mentioned, we thought it right to visit the greater number of the Royal Burghs, in order to satisfy ourselves, by inspection of the Register and inquiries on the spot, as to the system pursued, and its more or less efficient working.

System of registration within burgh.

The Register in each burgh is contained in bound volumes, transmitted (since 1810) in blank from the Register House in Edinburgh, in which the Sasines or other deeds, given in for registration, are engrossed *ad longum*. There is, or ought to be, also a relative Minute Book; but in a few instances we found it had been neglected. The system of minuting is the same as in the General and Particular Registers formerly described. The volumes both of the Register and Minute Book appeared to us, on the whole, to be cleanly and legibly written, and regularly kept. When filled up, they remain in the office of the Town-Clerk, which in some instances we found, on our visit of inspection, to be situated without the burgh. They are, as in the case of the other Registers, patent to the public on payment of a small fee.

Number of volumes.

The number of volumes which have accumulated in this way in the hands of the Town-Clerks, varies according to the size of the burgh, and the frequency with which the property within it is transferred. In some of the smaller burghs, in which the Registers often go back to the end of the sixteenth century, there are five or six volumes. In Glasgow, which is the largest, there are 594 volumes of the Register, and 93 of the Minute Book.

No Abridgments or available Index.

There is not in any of them the same provision made for abridging the recorded deeds, or for preparing general Indexes, as in the General Register House; and we shall afterwards explain the peculiar difficulty there would be in carrying such a measure into effect. There is generally prefixed to each volume of the Register, an Index, or rather list of names alphabetically arranged, of the granters and grantees of the deeds recorded in it; but it is of little practical value for a search.

Exceptional features.

The features which characterize burgh property, and affect the question of registration, are chiefly these:—

In small and decayed burghs properties of trifling value.

(1.) The first is the number of small and decayed burghs which are to be found situated in various districts of Scotland. In these burghs the properties entered in the Register are generally of very trifling value. The houses vary in value from L.40 or L.50 to L.100 and L.200. Hence a search in the Register is found burdensome, and is rarely made in cases either of transfer or loan. The parties interested, who are generally resident on the spot, usually apply to the Town-Clerk for information whether a property is burdened; and he, from his personal knowledge of the record and of the property, is able to give them the information required. This he often does without charge. If the Registers were removed from these burghs, there would be no means of obtaining such information except by a formal search conducted at the seat of the Register; and the expense of a search in cases such as we have now been considering, would either operate as a prohibition to transfers and loans, or force parties, from inability to meet the expense, to complete the transaction without that knowledge in regard to the existence of prior incumbrances, which it is of so much importance to possess.

Descriptions of property vague.

(2.) Another peculiarity pervading almost all burghs is, that the properties are very vaguely described in the title-deeds, and consequently in the Register. The description is generally made by mentioning the class or character of the building, the name of some person, who may have built it, or to whom it may have belonged, or by whom it may have been occupied at some remote period. If it fronts a street, the name of the street is given. It is also frequently described by giving the names of former proprietors or occupants of the adjoining properties by which it is bounded. Such descriptions are intelligible only to a person intimately acquainted with the burgh, and with its past history, and convey no information to a stranger. In many cases, it is, therefore, only local officers, having a long and intimate acquaintance with the properties and proprietors in the burgh, who, on a perusal of the titles or Register, can recognise the locality of a property and make a search.

Other peculiarities.

(3.) Most of the property in the burghs belongs to, and is dealt in by, parties resident in the burghs, who alone have much interest in these Registers; and nearly all transactions in burgh property are managed by professional men practising in the burgh.

(4.) No deed of burgage tenure can be recorded in the General or Particular Register of Sasines, or indeed in any except the Burgh Register.

Registers in smaller burghs should not be removed.

We have, in a previous part of this Report, explained the grounds on which we are of opinion that the Great Registers of Land Rights ought to be brought together in one place, and committed to the charge of one responsible officer. But we are satisfied, for reasons based on the peculiarities now explained, that the Registers of Burgh Rights in the smaller burghs should, at least for the present, be treated exceptionally; and that the disadvantages and inconveniences which would result to the local public from the immediate removal of the Burgh Registers to the General Register House in Edinburgh,

or elsewhere, would outweigh the benefit of the more perfect system on which they might be kept there, and the greater security offered by deposition in a national repository.

Same conclusion as to Registers in larger burghs.

While, in the case of the smaller burghs, we have become satisfied on these grounds of the inexpediency of any immediate change, we have, in regard to the larger burghs, arrived at the same conclusions, but for reasons somewhat different.

In Glasgow and other large burghs, where the transactions in property are numerous, the Minute Books have of late years become very voluminous. Notwithstanding, in consequence of the operations of sale and loan frequently involving pecuniary interests of large amount, the practice of searching is much more general in these than in the smaller burghs. The searches, however, are conducted almost exclusively by the Town-Clerk, or some one in his office, through whose hands all the deeds have passed on registration. Great reliance is placed by the searcher upon local knowledge, and on memory; the latter being in some cases aided by private indexes or memoranda. These memoranda we have seen written on numerous loose sheets, the entries in them being arranged under streets or other arbitrary headings, scarcely intelligible to any one else than the writer. We have in no instance found any systematic official system adopted, whereby searching might be rendered in time to come easy and secure. Practically, the present arrangements have been hitherto found adequate, and have worked economically. But it is impossible not to foresee the probability of serious inconvenience and loss to the public, from a further increase of registration business, or from accidental causes, such as the unexpected death of a Town-Clerk, or of his assistant, or from the loss of the memoranda, or from their removal from the office by the individual to whom they in many cases belong.

Our first impression, on a view of these circumstances, was, that it might be expedient to establish a distinction between the smaller and larger royal burghs, and to remove the Registers of the latter to the General Register House, to be amalgamated with the proposed County Registers of Land Rights. But, upon further consideration, there appeared to be well-founded objections to this plan.

Objections to removal.

(1.) Although in the larger burghs many of the transactions affect property of great value, there are in them frequent transfers of property of very small value. It is expedient, therefore, to pursue a course which shall provide for the convenience of both.

(2.) Another objection to the consolidation of the Burgh with the County Registers—at least so long as the present mode of describing property shall continue—is the difficulty of making any such abridgment of the description of burgage property as would be available for the purpose of indexing and searching. This difficulty will perhaps be made more apparent by the further explanations we shall have occasion to give, when treating of the proposal to adopt the Ordnance Survey as an aid to description.

(3.) The reasons against the incorporation of the Burgh with the County Registers are not confined to the injury or inconvenience which such a measure would inflict on the burghs. The Registers of many of the counties are already overburdened with the number of house properties situated in the suburban districts near to, but outside, the burghs; and the duty of abridging and indexing is thereby greatly complicated. Even, therefore, were it thought expedient to remove the Burgh Registers to Edinburgh, either at present, or hereafter when the general use of the 'Search Sheet' may have obviated some of these difficulties, we should question the expediency of incorporating them with the County Registers, or subjecting them to the process of abridgment. It might be better to keep them separate, and index them in the manner we shall afterwards point out.

Authorities against removal.

The expediency of the Burgh Registers being retained in the localities was brought under the consideration of the Scottish Law Commission, appointed in 1837; and though they refrained from expressing an opinion upon it, valuable evidence in favour of their retention is to be found in the Appendix to their Third Report. Mr Thomas Thomson, in answer to the question, 'Do you think the Burgh Registers should be maintained as well as the County Registers?' gives the following decided opinion: 'I think it would be inexpedient to abolish the Burgh Register.' He then proceeds to notice a matter of considerable interest in connection with Burgh Registration which then required, and still requires, regulation. He says: 'But it is in great want of regulation, so far as to make it quite clear and certain what particular species of instruments and deeds are to be recorded in it. A great deal of embarrassment has arisen on that account, and I have been anxious to introduce into one of the first bills that came into Parliament upon the subject, a declarator upon that point. My own impression is, that no registration is valid in a burgh unless under a burgage tenure; but I know that opinions to a different effect have been given. I have had many discussions with the late Mr Ross upon the subject, and we were of opinion that, as the law now stands, Burgage Sasines only could be recorded in the Burgh Record; and looking at what was the object of the Burgh Record, it is quite clear that nothing but burgage tenure could enter into the Books of the Town-Clerk, and that nothing more was intended by that Act than to give legal effect to those sasines; and therefore the registration of Feu Sasines in that Record is quite inept. But upon this subject, the *only point* that I think deserves consideration is this, to make the thing perfectly clear *which of the two Registers* is the proper one to be resorted to. I see no possible objection, merely upon principle, in legislating to the effect of making it quite competent and proper that everything within the royalty of a burgh connected with the transference of property should enter on record; it would certainly be very useful in disencumbering the Record of Edinburgh and the Record of Glasgow of an immense mass of matter.'

Appendix to Third Report of Law Commissioners (Scotland), p. 239.

The late Mr Roger Ayton, W.S., a conveyancer of great experience, gave evidence before the Commission as follows:—'Of Burgage Holdings.' 'Of all the different manners of holding this is the most simple, and the mode of completing the title by seisin *more burgi*, and cognition, the easiest, and ought as much as possible to be extended. House property and landed property ought not to be blended, and the Registers for burghs ought therefore to be kept as separate as possible from those for counties. It is the mixing of the two together that occasions confusion in the Records, and the expense of transferring small properties being nearly the same as larger ones, an opportunity is thereby afforded of raising popular complaints against the expense of conveyancing in general.'

P. 124.

If not removed, should be regulated.

But in recommending the continuance of the Burgh Registers, we consider it necessary that provision should be made to secure that they shall be properly compiled, and be kept in safety against loss or injury, as well as rendered more serviceable than at present for searching.

Presentment Book.

(1.) A Presentment Book, in the form we have already described, should be kept by each Burgh Registrar; and so long as a Minute Book is used in the General Register House, one in the same form should be used in every burgh.

Indexes.

(2.) The names of the granters and grantees of every deed should be alphabetically indexed, and District or Street Indexes should also be framed in the larger towns, in the manner we shall immediately suggest.

Supervision.

(3.) A frequent and minute supervision of all these Registers, by the officials of the General Register House, should be kept up. An attempt to enforce such supervision, by means of returns and correspondence, was made by Mr Thomson; but though his interference produced much improvement in the Registers, the returns were never satisfactorily made, and were complained of as defective, in nearly all his Reports. The arrangement which he found most effectual, was the employment of Mr Waddel, the clerk of the late Lord President Hope, who had occasion to perambulate the country as an officer of Stamps, to inspect the Burgh Registers at the same time. Mr Waddel did so for some years; but his department in the Stamp Office having been abolished, his services to Burgh Registration were lost. We would suggest that the local officers who at present supervise the Register of Births, etc., might be entrusted with the duty of ascertaining, by occasional examination of the Registers, that all deeds presented for registration had been regularly entered from day to day, in the Presentment Book and Minute Book; that no undue delay took place in engrossing them in the Record; and that the Record itself was *ex facie* carefully and correctly written, and the Indexes duly and carefully compiled. But, in addition to this, we consider it necessary that the Register Books should either be periodically transmitted to the General Register House for examination (to be again returned to the Town-Clerks); or, that the burghs should be visited from time to time by a properly qualified officer from the Register House, for the purpose of examining the books on the spot. It should be one of the chief objects of this supervision to ensure that the system of minuting and indexing is faithfully carried out in all its details; and the officer should, on each inspection, report specially on each Burgh Register to the Lord Clerk Register. Each keeper of a Register should be bound to follow such instructions as might be issued from time to time by the Lord Clerk Register, or by the Court of Session on his application.

Uniform rate of fees.

(4.) A uniform rate of fees for registration, and for searches (a subject to which we shall have occasion again to refer), should be established; and the keepers of Burgh Registers, many of whom are already trained to searching, should be bound to furnish searches to all parties when required.

Fire-proof accommodation.

(5.) In many of the burghs, and in nearly all of the most important ones, fire-proof accommodation for the custody of the Registers has already been provided, but in others there is no such provision. It should be made imperative on the magistrates of every burgh, in which a Register of Sasines exists, to provide fire-proof accommodation, by means of properly constructed stone safes, or of fire-proof iron chests; and the Lord Clerk Register should be authorized to adopt all measures necessary for enforcing this.

How searches in Burghs may be facilitated.

The question to which we have already alluded, how the Registers in burghs may be rendered most available for the purpose of search, is one of considerable difficulty; and it has been with us a subject of frequent consideration. As formerly explained, the process of abridgment is a very valuable part of our present registration system; and it seemed, therefore, at first sight objectionable to continue to exclude from its operation so large a class of deeds as those affecting property throughout the burghs of Scotland. That such deeds would require to be excluded, if their registration were still to be made in local Registers to be retained in the locality, appeared to us to follow as a necessary result; for the keepers of the Burgh Registers, as a class, do not at present possess the skill requisite for the purpose, and the process of abridging could not, in our opinion, be carried on with sufficient economy, if a separate trained staff had to be provided for the purpose in all the burghs, or even in all the large burghs. We were, therefore, obliged to consider the question of search in the Burgh Registers, on the assumption of no abridgments being practicable—a position, however, to which we were the more easily reconciled by the conviction already expressed, that the descriptions of burgh property are ill adapted for abridgment; and that the number of small properties in burghs would, unless the operation was absolutely indispensable, render its adoption an undue pecuniary burden on our registration system.

The question, then, seemed to us to be reduced to the single point—whether, by means of the Presentment Book, Minute Book, and Register, without abridgment, but with an improved system of indexing, searches could be made with safety and economy; and we are of opinion, that under certain conditions which we shall now state, searching might be carried on by, and on the responsibility of, the keepers of the Registers, without an establishment greater than is necessary for registration, except, perhaps, in Glasgow and a few other large towns where an addition to the staff might be required.

Index of Persons.

(1.) We think that, in most burghs, a carefully compiled Index of Names of Persons would be sufficient to enable a search to be made. An occasional reference from the Index to the Presentment or Minute Book, or even to the Register itself, would not be very troublesome.

Street Index.

(2.) In the larger burghs, an Index of Properties arranged according to Streets should also be made, so as to afford the opportunity, which would probably be of value in the majority of such burghs, of making another search by means of it, to check and verify the search made in the Index of Persons.

Division of large burghs into registration districts.

(3.) In some of the largest burghs—such as Edinburgh, Glasgow, and Aberdeen—where the area of the burgh, viewed as a registration district, is too extensive, we recommend that it should be divided into registration districts, with specific boundaries for each district. These districts might have either a territorial or numerical designation; and if it were provided, that the description of the property in such burghs contained in any deed should thereafter set forth the particular *registration district* of the town (in the same way as the *parish* is referred to in deeds affecting lands in counties), the area within which a search would require to be made would be greatly diminished. We prefer the

formation of such registration districts in large towns, to the adoption of the existing town parishes, because a parochial division would in many instances be too large for the purposes of registration and search; and because, under a new allocation of districts, better and more clearly marked boundaries might be assigned than many town parishes possess. In cases where a deed embraced properties in more than one registration district, a minute of it would be entered in the Minute Book of each district, while the deed itself would be recorded only once in the Register, and referred to in each of the minutes as being recorded there.

Provision should be made for fixing boundaries of registration districts.

It is of paramount importance, however, that such registration districts should have boundaries well defined and permanent, and which do not intersect properties. To provide for this, the Magistrates of these large burghs might be authorized to apply to the Sheriff of the county to fix the size and boundaries of the registration districts, and to make provisions for their being made public, and preserved in future. It is not probable that dissatisfaction would arise in regard to the districts thus fixed; but if any party considered himself aggrieved by the Sheriff's decision, he might be allowed to appeal, by Reclaiming Note, to the Junior Lord Ordinary of the Court of Session, whose decision should be final.

Effect of a Search Sheet being introduced.

We anticipate that the difficulties of search, arising from the special circumstances in burghs to which we have adverted, will ultimately be obviated by the introduction of the Search Sheet; for, however vague the description of a property in any deed may be, it will be directly connected with its Search Sheet, and with its distinguishing number; and if every deed affecting such property is entered in the Search Sheet at the same time that it is recorded in the Register, all difficulty will cease so soon as such Search Sheet shall have been in existence for forty years.

Proposed establishment of local Registers in large towns.

In connection with local Registers for Royal Burghs, a suggestion has been made, that large towns of importance, though not Royal Burghs, and thus having no local Register at present, should have such Registers assigned to them. It has been urged that, if there are good reasons why small and unimportant places, such as many of the present burghs, should have local Registers, the same reason must apply with even more force to large towns such as Greenock, Leith, Kilmarnock, and others.

We felt for a time some hesitation how to deal with the case of such towns; but we have come to the conclusion that it would not be expedient to establish new Registers in them.

Reasons why extension ought not to be adopted.

There is no doubt that many of the peculiarities characterizing property within Royal Burghs apply equally to large non-burghal towns. Were the question then—Whether, as a part of a general system of land registration now to be introduced for the first time, the same rule as to registration of titles should be applied to both,—we should have little hesitation in giving a decided answer in the affirmative. But a different system already prevails in each; and it is a more difficult question to decide whether the advantages of a change would be so great as to overcome not only the temporary inconvenience, but the permanent additional expense that would attend it. In this last view, it must not be overlooked that we have not been able to see our way to reconcile the benefits of abridgment with local registration. But apart from these considerations, we expect that, by the establishment of the system of 'Search Sheets,' it will ultimately be possible,* without any risk of hardship to the Royal Burghs, to do away with their Registers, and thus put the whole of the country on the satisfactory basis of one general establishment. With that result in prospect, we consider that it would be most inexpedient to establish any new local Registers.

Irregularities in tenure and registration of lands within burghs.

In the course of our inquiries in connection with the Burgh Registers, a matter of serious importance came under our notice, to which we feel it right specially to advert.

In many of the Royal Burghs possessing Registers of Sasines, irregularities prevail in regard both to titles and registration, which are productive of present difficulty and expense, and may, unless a remedy is applied, give rise at no distant date to much litigation.

In some burghs there are grave doubts whether certain properties, locally situated within the territory of the burgh, are truly held by burgage tenure or in feu, and whether the deeds relating to them ought to be registered in the Burgh Register or in the Registers appropriate to feu holdings. This uncertainty is, in many cases, increased by the titles being of a mongrel character, partaking partly of the peculiarities of feu rights, and partly of the peculiarities of burgage rights. We have been told that in some burghs within the last forty years, it was the practice, in preparing the deeds, to endeavour, without regard to the holdings in the prior titles, to give them the character of burgage if it was the Town-Clerk, and the character of feu holding, if it was another professional man, who was employed to prepare them.

In other burghs other anomalies frequently occur. Lands within the royalty, and undoubtedly held by burgage tenure, have in many instances been *feued* out by the Magistrates, to be held under themselves, in feudal tenure. In other instances, lands lying within the royalty, and held by parties in burgage tenure, have been *feued* out by them, to be held of themselves as mid-superiors by feudal tenure. The competency of engrafting feudal holdings upon lands held burgage, especially if the feu rights have been granted by parties other than the Magistrates, may be doubted. But, even if such feus were held to be competent and effectual, a practical difficulty, involving very serious consequences, arises in every such case—viz., Whether such feu rights, and all subsequent titles affecting the *dominium utile* of the property, ought to be recorded in the Burgh Register, or in the General

* One of the great difficulties, in time past, of introducing changes into the system of local registration of land rights, has arisen from an anxiety not to injure the vested interests (where such exist) of those registrars who are for the time being entitled to the fees of office. This has been peculiarly felt in the case of town-clerks. It has occurred to us that it might be advisable that a public Act of Parliament should now be passed, declaring that no town-clerk in Scotland to be appointed after the date of the Act, should have any claim to compensation in respect of changes to be thereafter made in the system of registration of sasines, etc., within burgh, or of any alteration of the tables of fees payable for such registration. A clause to that effect, it is understood, is now uniformly inserted in the commissions granted by the Crown to the keepers of District Registers.

or Particular Registers of Sasines? Registration in the wrong Register would, of course, be fatal to the title.

Example of Rothesay.

The burgh of Rothesay furnishes a striking example of the difficulties arising from this cause. Nearly one-third of the burgh property is held, by its proprietors, in proper burgage tenure, under the Magistrates; about another third of the property held by the Magistrates in burgage tenure, has been parcelled out, under feu rights granted by the Magistrates; and the remainder of the burgh, consisting of property also undoubtedly burgage, which was acquired from the Magistrates by an ancestor of the present Marquis of Bute, and is still held by his Lordship in burgage tenure under them, has been feued out, and is held by the vassals, under the Marquis as feudal superior. Thus, while the Marquis himself holds under the Magistrates in burgage tenure, and his infeftments are properly recorded in the Burgh Register, other parties hold parts of the same property in feudal tenure under the Marquis, and have recorded their deeds, some in the District Register, others in the Burgh Register, and, of late, very generally in both; but of course at double the usual expense.

In many other burghs similar looseness prevails, and registration is made, in some instances in the Burgh Register, in others in the District Register, and in a few in both.

Remedies proposed.

It is manifest that this state of matters presents an evil of magnitude, which is almost certain to be productive ere long of confusion and insecurity of title. We have therefore anxiously considered how it may be remedied for the past, and provided against for the future. A declaratory enactment, as suggested in the quotation from Mr Thomson's evidence given above, might render all existing titles of the anomalous kind which we have described, and all past registration in whatever Register it may have been made, free from challenge on the ground of irregularities either in the holding or in the registration, unless where proceedings were already depending in Court. As to the future there is more difficulty. So far as regards the manner of holding, the most obvious course would be to provide that all lands situated within the territory of a Royal Burgh, should, in every deed to be executed after the passing of the Act, be treated as burgage. But unfortunately numerous valuable reserved interests have been created by subinfeudation, such as feu-duties and casualties, which it is impossible to ignore, and difficult to convert into ground-annuals. It seems unadvisable, therefore, to attempt to compel the restoration of burgage tenure where it has been abandoned; but, perhaps, while all existing titles, in whatever form, are declared free from challenge, as suggested above, all future infeudation of burgage property might be prohibited; and facilities might even be given for a return to burgage holdings.

So far as regards the difficulty as to registration, two courses seem open; either to abolish the separate Burgh Registers, and to authorize the registration of all deeds, whether feu or burgage, in the County Register of Sasines; or to declare the Burgh Registers, in the burghs where such anomalies exist, to be a competent Register for all property within the burgh, held by feudal as well as by burgage tenure. For the reasons already stated, we cannot recommend that the Burgh Registers should be abolished, and burgage deeds added to the County Registers; and it will therefore, in our opinion, be expedient to have such Burgh Registers, declared to be the only competent Registers for registration of the titles, of all feudal as well as burgage property, situated within the burghal territory.

Miscellaneous suggestions considered.

Various suggestions have been made to us, and various arrangements have occurred to ourselves, for improving the Registers of Land Rights, and for facilitating and cheapening searches, which could not be conveniently dealt with under any of the heads in the preceding part of our Report. These we shall now notice.

Printing the Register.

I. It was proposed in the Report of the Committee of the Solicitors before the Supreme Courts, and it has also been suggested to us in several of the towns which we visited, that the deeds given in for registration, in place of being engrossed in the Register* in manuscript, should be printed; and that to expedite the operation of printing, as well as to enable the original to be returned without loss of time, a copy of each deed, made by the ingiver, should be handed to the registrar, along with the principal deed. It has also been suggested that this copy might have all the names in it, whether of persons or of places, distinguished by underlining, so that these names might at once be printed in a distinctive type. It was urged by those who recommended this—(1) that a printed Register would be more accurate and more easily read than a manuscript one; (2) that it might be more speedily compiled, and the principal deed sooner returned to the ingiver; (3) that printed copies of the entire Registers might be sent to every county, so as to give to each the benefit of possessing an authentic duplicate of the whole; (4) that a printed Register might supersede, for searching purposes, the printed Abridgments; and (5) that the expense of printing would not greatly exceed the expense of compiling such a Register in manuscript.

At first favourably viewed.

We were at first inclined to consider very favourably the suggestion that the Register should be printed; and had we found that the expense would not have materially exceeded that of a manuscript Register, and that a printed Register, with the names of persons and places in a distinctive type, would have been equally available for searching purposes as the existing printed Abridgments, we should have been disposed to recommend the plan. After full investigation, however, we are satisfied that, both as regards expense and usefulness, the proposal is liable to objection.

But additional expense large,

To ascertain the expense, we got portions of deeds put into type in two forms—the one being open and easily read, and the other being somewhat more crowded and less distinct. We then got from the Deputy Keeper of the Records, in conjunction with the printer, a detailed estimate of the expense of printing the whole Register, in each of the two styles, for one year; and we got from the Deputy Keeper a state of the expense of engrossing the same deeds, as at present, for the like period. The

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* It is proper to explain that the term 'Register' is used in this and some of the succeeding paragraphs in its restricted sense, *i.e.*, denoting only the series of volumes in which the writs or deeds are engrossed, and not the relative Minute Books, Abridgments, and Indexes.

result was, that, while the manuscript Registers for the year 1860 cost for books, binding, and writing the sum of L.3232, 10s., the expense of printing the same Register, if the first style of printing had been adopted, would have amounted to the sum of L.12,277, 13s.—being an increased expense of L.9045, 3s. If the inferior style of printing (which we should scarcely have been disposed in any event to recommend) had been adopted, the expense would have been L.9795, 18s.—being an increased expense, above the manuscript plan, of L.6563, 8s. An increase to the extent of either sum would have precluded the hope of being able to reduce the expense of registration for the present.

We have further satisfied ourselves that a printed Register, even with all the names of persons and places in a distinctive type, would not be servicable for searching purposes, and would not supersede the printed Abridgments. The great advantage of the printed Abridgment is the ease and rapidity with which its pages can be turned over, and the entries referred to. We have had an analysis made of the volume of the Abridgment for the county of Ayr for the years 1851–1855 inclusive. It contains 4309 entries, and occupies 279 printed pages, which represent 22,620 pages of the MS. Register, and would represent 8137 pages of the same Register if printed.

And printed Record would not supersede printed Abridgment.

As respects the transmission of a printed Record to counties, the printed copies of the Abridgments and Indexes, which we have recommended to be transmitted to the counties periodically, will occupy much less space than a print of the Register itself, and thus, in combination with the Indexes, will be more generally useful.

We therefore cannot recommend that the Register should be printed.

Printed Abridgments equally available for transmission to counties.

II. We have also considered whether the elaborate Survey of Scotland by the Ordnance Department, now far advanced towards completion, might not be rendered available to supersede the rude and cumbrous style of description of property usual in our deeds, and thus simplify and cheapen the operations of registration and search. The subject is a most interesting one. But, after giving the question our best consideration, we are of opinion that it involves a larger change on the system of conveyancing in Scotland than can be advantageously dealt with as incidental to improvements in the system of registration. While, therefore, we think it our duty to enter into the subject at some length, and to explain its bearing on registration, in the expectation that our doing so may eventually be of use, we are not prepared to recommend any compulsory alteration of the present system.

Use of Ordnance Survey in deeds and registration.

We have already explained generally the mode of describing property in Scotch deeds, but we shall now go into the subject more in detail.

The 'description' of property, in what is technically known among professional men as a progress of writs or titles, whether passing property from father to son, or conveying it from seller to purchaser, is seldom or ever varied by a conveyancer. It is only when land is split up into several portions, and when a new description becomes absolutely necessary, that a change is made. In such a case, the practitioner who drafts the conveyance, after giving the new description, usually refers back to and repeats the description of the whole land, of which the parcel conveyed formed a part, and this reference is in practice continued in every succeeding deed. It is by no means unusual to find, in the conveyance of a plot of ground on which a house has been built in the suburbs of a town, a reference in succession to three or four earlier descriptions of larger plots of ground which had been each respectively from time to time split up. The same thing occurs occasionally even in rural subjects.

Present mode of describing lands,

There is one class of properties in the country, chiefly large estates (lordships or baronies), which are known and described in the titles by a single name. In another class, occurring more frequently in our titles, the lands are distinguished by a reference to the amount in Scots money at which they stood valued in the national census or valuation of lands in Scotland made in the fifteenth century, as a 'twenty pound land,' or 'thirty shilling land,' or 'ten merk land,' and so on. Then there often follows a long string of descriptive words—castles, towers, fortalices, manor places, houses, biggings, yards, orchards, parks, mosses, muirs, meadows, outfield and infield, milns, miln lands, multures, sucken and sequels, woods, fishings, coal, coalheughs, tenants, tenandries and services of free tenants, *annexis*, *connexis*, parts, pendicles, and pertinents whatsoever; together with the teind sheaves, and other teinds, as well great as small, parsonage and vicarage of the said lands. There is still another class, embracing estates both large and small, the description of which is rendered lengthy by the ancient names of a great number of small farms, or fields, or ploughgates, or poffles, or daughs, or davochs, or cottars' houses and crofts. Of these the names are given in detail, although no longer in common use; and we have already pointed out that this practice renders the compilation of an Index of Places very complex and difficult. The description of a property by its boundaries is the distinguishing feature of a fourth class, chiefly confined to small plots of ground in the country given off or feued by large proprietors for the erection of villas or houses, and to subjects in or near a town. It is usual, in modern descriptions of this last class, to insert the exact measurement of the ground, and the length of each boundary. In consequence of the boundaries being ideal lines, except where a street or some natural feature occurs, the only way in which these can be specified is by giving the name of the present or former proprietor of the adjoining ground. These names are in practice seldom altered, although the persons who bore them may have been long dead and forgotten. Possession, however, is frequently referred to in the deed, to explain and even control the verbal description, especially if ambiguous or antiquated.

Such is the clumsy mode of description usual in Scotch conveyancing. Except in the first class referred to, the descriptive clause is generally of considerable length; and now that many other clauses in Scotch conveyances have been either greatly curtailed or altogether dispensed with, it forms a large proportional part of the deed.

Is a grievance.

We have been hitherto referring to the description of properties as these are found in the vassal's title. But it will be recollected that the superior has a concurrent real estate in the same lands. Therefore, in his title also there is the same description of the lands; but it is followed by an exception

Descriptions in superior's titles.

or reservation of the vassal's right, as being a burden on that of the superior. The same vassal may, moreover, hold a part of his land from one superior, and a part from another; while one superior may have several vassals. There thus frequently arises a confusion from the similarity, entire or partial, in the descriptions in these deeds, which is embarrassing to a searcher.

Descriptive clause has two functions.

In order to understand the reasons which have led to the continuance of a system so cumbrous and unsatisfactory, as well as to appreciate the difficulty of effecting an improvement on it, it is necessary to keep in view that a descriptive clause requires to be framed so as to perform two separate functions. The first of these is the ascertainment, in any question between the proprietor and his neighbours or others, of the situation, boundaries, and contents of the property; and the second is the continuous identification of the property, as being the same, in the various writs regarding it, successively recorded in the Register of Sasines. The former of these would suggest the expediency of frequent revisions of the description; the latter prohibits any change on its terms, whereby the identity may be rendered doubtful, or time may be consumed in ascertaining it.

Reasons why old form of descriptions is adhered to.

What we have already said as to the usual style of description in Scotch deeds, shows that practitioners, in endeavouring to steer the safest course between these conflicting requirements, have preferred to abandon any attempt to revise the description, and have studied anxiously to preserve the identity. This is obviously the least troublesome and the safest course; and what also renders it practically the least objectionable, is, that in all deeds affecting the vassal's interest, which are the most numerous, the danger of indistinct description is lessened by introducing a special reference to the state of possession. This, however, is not practicable in the case of the superior. He is not in possession of anything but his annual feu-duty, and frequently knows only very generally, if at all, where the lands which form the security for his feu-duties and casualties lie, and of what they consist. His agent, therefore, in preparing any deed affecting his interest in the lands, has even stronger reasons than occur in the case of the vassal, for adhering to the old description.

Feu-duties.

From the practice of superiorities being conveyed by a description of the lands themselves, under burden of the vassal's right, and from the absence, consequently, of any specification of the superior's reserved pecuniary interests on the face of his title, it not unfrequently happens that large landowners are entitled to superiorities of more or less value, of the existence of which they are ignorant until the vassal in the lands applies to them for an entry or renewal of his investiture.

Ground-annuals.

The position of the holder of a ground-annual is very similar to that of a superior, except that the nature and extent of his reserved pecuniary interests are always expressed on the face of his title. Until, however, some interruption occurs in the regular payment of the annual sum due to him, he has no occasion to inquire, except very generally, as to the exact area of ground or buildings over which his rights are secured. The amount of the reserved payment is, in the case both of feu-duties and ground-annuals, usually so much below the value of the property on which it is preferably secured (taking precedence of all mortgages, or real burdens, of a later date), that the holder and his man of business do not require to inform themselves as to more than the general character of the property and its gross rental.

How far better means of identification would lead to adoption of improved descriptions,

Or a reference to the Ordnance maps.

Under these circumstances, it would obviously be of the greatest importance, in the case both of superior and vassal, were it practicable, in place of resting the continuous identification of the property in the Register, upon a *verbatim* repetition of the old descriptions, to substitute some means of connecting together all deeds in the Register affecting the same property. By such a plan, the necessity for a strict adherence to the precise terms of the old descriptive clause would be superseded, and full scope would be given, at least in the title of the vassal, to the frequent revision of the description, as circumstances occurred to require it. In the hope that this object might be obtained by a reference, to be made in every deed, to the Ordnance maps when completed, we have endeavoured to make ourselves acquainted with some of the details of the Survey. Having been put in direct communication with Sir Henry James, we were most kindly furnished by him with all the information we required; and Colonel Leach, his late assistant, who is an earnest promoter of the application of the Survey to practical uses, communicated to us many valuable suggestions.

Account of the Ordnance Survey and maps.

The Ordnance Survey of Scotland being of a more recent date than the Surveys of England and Ireland, has had the advantage of all the knowledge and experience gained during their progress.

In Scotland, the land has been mapped on three scales: one (25 inches to a mile) embracing the whole of the cultivated lands, published in parishes, which may be termed the parish map; a second (6 inches to a mile), published in counties, which may be termed the county map; and a third (1 inch to a mile), which may be termed the geographical map of the kingdom. In addition to these, maps are prepared of all towns containing more than 4000 inhabitants, on a scale of 10 feet to a mile, and every building or house is distinctly defined. There is compiled, with references to each of the parish maps, a sheet or sheets of superficial measurements, showing the acreage of every enclosure delineated on it.

The boundaries of counties, parishes, and burghs are all minutely and accurately delineated in the larger of these maps, as well as every river, road, fence, plantation, and building.

In regard to rural districts, there are sixteen sheets of the larger scale to every single sheet of the smaller. Each parish is contained on sheets numbered I., II., III., IV., etc. Each enclosure or building on the plan is shown with marvellous distinctness and accuracy, and numbered in its parish, 1, 2, 3, 4, etc. In regard to royal burghs and large towns, the Ordnance large scale maps show every boundary by distinct lines; and each property, if separate, may be recognised by any one intimately acquainted with the locality. But the enclosures are not distinguished by running numbers or other distinctive marks, to which reference could be made, as may be done in the case of rural parishes. Indeed, it would be impossible to number properties or enclosures in a densely peopled town, more especially in a Scotch town, where the houses in different flats, with their cellars and ash-pits on the sunk floor, belong to different individuals. Should it be resolved at any future time to adopt the style of description which we shall venture to suggest as applicable to the country, some other plan must be devised as regards towns.

Copies of the Ordnance maps can be multiplied with the greatest ease, and they might, without loss to the State, be sold at a mere trifle for each sheet. We were told that it would be easily practicable to deposit in public places in each district of the county, standard copies of all the maps relating to such district, for reference, as well as copies for sale.

How far would the maps be available?

The question for our consideration seemed to be—Could the Ordnance maps, thus rendered generally accessible, be made the means of improvement in registration and searching?

Rural subjects.

In so far as the description of property in a title is intended to fix its situation, boundaries, and contents, it appears to us that a reference to these maps might be beneficially resorted to in rural districts, and in the titles of a vassal, or proprietor of what is technically called the *dominum utile*. Not that we propose anything of the nature of a Map Registry, or intend that the voluntary substitution, by the granter of a deed, of a reference to the Ordnance map in place of a verbal description, should in any way affect the rights of parties having conflicting claims to the same piece of land. We propose such reference only for the purpose of rendering it more plain what is the land intended to be conveyed by the granter of the deed, leaving his right to convey, where a dispute arises, to be settled on other evidence. In such deeds then, as are above referred to, after giving (in the first of the new series) the previous recognised description, the deed might proceed as follows: 'Which lands and others before described are hereafter to be known as all and whole those lands in the parish of and county of , numbered 1, 2, 3, 4, and 5, and also 147 to 149 inclusive, on the Ordnance map of said parish, published 1861, and which, by the Ordnance Survey sheet relating to said parish, extend in whole to acres, poles imperial measure, or thereby, together with the whole parts and pertinents of said lands, to which the granter hereof has right, by virtue of his ancient titles.' In all future deeds affecting these lands, it might be provided that the ancient description should not be repeated, but referred to as being already in the Register.

If subdivided.

In the case of property, as shown on the Ordnance maps, becoming subdivided (subsequent, of course, to the date of the Survey), it might be described (as at present) by its contents and boundaries, and as part and portion of the enclosure numbered , in the parish of and county of . But it would be better, and would probably become customary, to have the subdivision shown on a copy of the Ordnance map, endorsed upon the deed and transferred into the Register. This registered copy might be referred to in all subsequent conveyances of the same subject. The same course might be pursued in case of any alterations of the boundaries of an enclosure. We were assured by the Ordnance authorities, that it would be very easy to make provision in Edinburgh for the rapid transfer of an exact copy of such a map into the Register at a very trifling expense.

Feu-duties, ground-annuals, and burgage subjects.

But, from the explanations we have given of the existing mode of describing property, not of a rural character, and of the particulars shown on the maps, formidable difficulties lie in the way of making the Ordnance Survey available in the title of a superior, or holder of a ground-annual, or in burgage and town subjects.

Cannot recommend compulsory reference to Ordnance Survey.

Without some radical changes on our system of conveyancing, the consideration of which would lead us into questions far beyond the scope of the present inquiry, these difficulties could not be overcome. The time, no doubt, may not be far distant, when a revision and simplification of the relations between superior and vassal may be effected, preserving all the substantial interests of each, while abolishing what is elusory or merely formal. When that is accomplished, one at least of the difficulties now noticed by us will be removed. Some plan may be devised to obviate the others. But at present it would be premature to declare the adoption of the Ordnance Survey *compulsory*, as a means of description.

But if adopted, how would it affect registration and searches?

We have still, however, to consider how far the plan proposed, for describing subjects by reference to the Ordnance maps, even were the objections we have stated to it removed, would be consistent with the requirements of registration and search. The object there, it will be recollected, is the easy identification of the property in the successive entries of it in the Register. For this purpose, it would not be possible to derive aid from any official abridgment of the description, such as is now made in the Register House, and relied on for the purpose. The whole system of abridgment would require to be discarded, and reliance placed solely on Indexes. These Indexes might, as under the present system, be of two kinds —one of names of persons, and the other of names of parishes. But the sub-entries under the leading heads in each of these, would require to consist solely of numbers, imported from the Ordnance maps.

The consideration we have given to the subject leads us to anticipate, that, in the transition to such a new system, and in the necessary connection of the new with the old, and in the reliance which must be placed on the accuracy of so many numbers in the deeds and in the Indexes, considerable practical difficulties would require to be surmounted. But while we deem it superfluous at present to go into detail, we are disposed to think, on the whole, that, so far as regards the requirements of search, the obstacles to the adoption of the system might be overcome; and if the plan of Search Sheets is found to answer, even the Indexes would become less essential.

We submit that this question is one which should be dealt with separately, and not as subordinate to registration, with which it is only partially connected.

Registration symbol.

III. It has been suggested that great facility would be given for searching, if to each property, when a deed affecting it came to be registered, there were affixed by the registrar a distinctive *registration symbol*, by means of a number or other simple form. It is part of this plan that the symbol should be repeated in every future conveyance of the property, and be used as its representative in all the books of the Register, particularly in an Index of Places. Supposing the symbol to be a number, the plan contemplates further, that a Search Ledger might be constructed, and a folio appropriated to each one of these registration numbers, in which each successive transfer of the property might be

entered, so that, by turning up the appropriate folio, a search might be made, against the property symbolized, in a few minutes.

Approved of in England. Law Commissioners (England), Third Report, pp.

A system of registration and search, by means of symbols, was approved of by the English Commissioners on the Law of Real Property, in the Report in which they recommended the establishment of a Register of Land Rights. But as no such Register has yet been established, the system of symbols recommended has not been practically tested. The views of the Commissioners will be found in their Report.

Submitted to Society of Writers to the Signet.

A somewhat similar scheme was submitted to the Society of Writers to the Signet, when the Committee on Registration appointed by that body were making their investigation. In their Report, however, they stated that they did not feel themselves possessed of sufficient information to enable them to give an opinion upon it.

Suggested also by two searchers.

Appendix, No. VI., p. 66.

A plan of registration by symbols was proposed to us by the late Mr Downie, one of the official searchers, and another by the late Mr Douglas, a professional but non-official searcher of the Records; and each of these gentlemen furnished us with a full exposition of his views in answer to one of our queries. The query and answers will be found in the Appendix, as we think it important that the views of these gentlemen, which are entitled to great consideration, as proceeding from persons of much skill and experience, should be fully understood.

Disapproved of by others.

We have anxiously considered these plans; and we have also invited the other Official Searchers, the Deputy-Keeper of Records, and the Keeper of the Register of Sasines, to give us their opinions upon them. All of these gentlemen, whose practical acquaintance with the Records entitles their opinion to great weight, concur in viewing both of the proposed plans of symbols, as unworkable in practice, and attended with much danger.

Appendix, No. VI., p. 73.

Mr Robertson, the Deputy Keeper of the Records, states his opinion at considerable length, and we deem it right to give his statement also in the Appendix.

Mr Brodie, the Keeper of the General Register of Sasines, is further of opinion that the Ledger, which the plan proposes, would soon be found so cumbrous as to make it unworkable.

Symbol useful, but application objectionable.

It appears to us, however, that advantages would be derived from the gradual adoption of a symbol to denote every different property, with a view to its easy identification, in the Register of Sasines and in the subsidiary books, and we have ourselves recommended such a symbol to be introduced along with the Search Sheet. But we consider that it would not be advisable to make use of this symbol to supersede entirely the use of descriptions; and that it would not be wise to make it the foundation of a Search Ledger, by which *alone* searches should in future be conducted. We think the practical objections stated to this part of the plan are very formidable, and that the 'Search Sheet,' which we have already explained, will accomplish the object desired, with more simplicity and with less risk of error.

Improved form of instructions for searching.

IV. In connection with the existing system of search, we have already noticed that considerable risk of error lurks under the present mode of obtaining a search, and that a remedy ought to be provided.

When an official search is applied for, a description of the property, as contained in the titles, is transmitted by the agent of the party to the Deputy Keeper of the Records, and placed by him in the hands of one of the official searchers. But though the search is made by means of an Index of Persons only, no authenticated list of the names of the persons to be searched against in that Index is usually given to the searcher. In many cases, he may be able to ascertain the persons, who were probably the proprietors of the lands during the period embraced in his search in the Register of Sasines, from the names of parties given to him to be searched against in the Registers of *Inhibitions* and *Adjudications;* and sometimes, for greater safety, he applies to the party ordering the search for an inventory of the titles during the period of search, from which he may learn the names of the parties to be searched against in the Index of Persons. This practice is very loose, and apt to lead to errors and omissions.

So long as searches were made in the Minute Books, or by means of an Index of Places, the search was truly one against the lands, the names of persons being resorted to only after an entry affecting the lands, or what appeared to be the lands, was found. Now, however, when the search is made, for the greater part of the prescriptive period, in the Index of Persons only, parties transacting on the faith of it have no means of knowing, from the certificate of search as at present framed, what persons were searched against, or whether the names of all the persons, who ought to have been searched against, have been furnished to the searcher. We have found that agents generally are not aware of the mode in which a search is now conducted; or of the importance, when an inventory of titles is applied for, of furnishing accurate information as to names; or of the responsibility that may rest upon them, if an imperfect search is the result of any error or omission on their part.

To provide against the dangers that may thence arise, we recommend that, in future, all instructions or memoranda for searches should not only describe the property to be searched against, but should specify the names and designations of all the persons whose acts or deeds may have affected it, during the periods for which the search is to be made; and further, that the certificate issued by the searcher should embody in it this note or memorandum of instructions, so that in all subsequent transactions, parties who accept the search may know, from the search itself, the precise instructions under which it was made, including, in particular, the names of the parties who had been searched against.

Improved form of certificate.

With reference to this, we quote the form of the certificate of search which is used in Ireland for what is there termed a negative search; and we recommend the adoption in Scotland of a similar note of instructions for search, and of a similar certificate, with such alterations as our practice renders necessary—the date at which the search should commence being fixed by the conveyancer, so as to provide, where he may think it necessary, for the case of a deed granted by a party having an incomplete title, and being subsequently infeft so as to bring in the principle of accretion;—

'After diligent search made in the Office for Registering Deeds, Conveyances, and Wills in Ireland, upon a requisition of which the following is a copy: "I desire to have a negative search for every Memorial registered in the Office for Registering Deeds, Conveyances, and Wills in Ireland, of the acts

of Robert Johnstone, John Johnson, and Sir James Johnson, from the 20th December 1810; against Charles Bagot, from the 1st of October 1831; and against Robert Jackson, from the 1st January 1836, up to the time of making certificate, affecting the lands of Crobally, otherwise Crowbally, otherwise Croaghbally; and of Knockdhu, otherwise Crockdue, otherwise Black Mountain, in the barony of Knocktoper, in the county of Kilkenny, except memorials relating to tenants' leases.

'"Dated this 10th day of August 1854.

'"WILLIAM HENRY, 21, Sackville Street, Dublin."

(Here follows statement of deeds found.)

'I certify that there is not any Memorial registered in said Office which comes within the terms of the said requisition, whereof an abstract is not in this certificate, truly set forth that is to say, one abstract.

'Dated the 27th day of August 1854.

'A. B., *Assistant Registrar.*'

Registers of Sasines to be also made Register for execution and preservation.

V. It has also been suggested to us that the Register of Sasines should not be limited to a Register for publication, but should be made also a Register for preservation and execution, with a view to issuing probative extracts of the deeds registered therein, containing a warrant for diligence, and thus saving the expense of recording the same deeds in a separate Register. This would, it is said, be of advantage, particularly in cases of feu contracts, heritable bonds, and other instruments, which now require to be recorded for feudal purposes in the Register of Sasines, and occasionally for execution or preservation in the General or Local Registers of deeds. These last mentioned Registers we have not yet had occasion to describe. They are the Court-books of the Supreme and Inferior Courts, and from them alone can probative extracts of deeds, accompanied by warrants for execution, be at present obtained. There is no doubt that, in certain cases, expense might be saved, by the change proposed, but a difficulty lies in the way.

Original deeds would require to be deposited.

When a deed is registered, and a probative extract containing a warrant for execution is issued, it is essential that the principal deed should be retained by the Registrar, as the warrant for issuing the extract, according to the present practice in all our Registers for execution. For it might happen that a deed, so registered, was forged, or liable to other fatal objection; and if a probative extract of it were issued, and used for execution against either persons or lands, great injury might result, without any remedy being available, if the principal deed were not retained. There would, in such a case, be nothing to prevent the concealment or destruction of the fraudulent deed, of which an extract had thus been set up and used.

Difficulties in the way.

On the other hand, were the principal deed retained by the Registrar, and an extract only given to the party, a progress of titles would very soon become, if the system were compulsory in regard to all deeds, a progress of extracts. But purchasers or lenders could not be expected to be satisfied with the exhibition of mere extracts; for it might be that the principal deed was void, or voidable, in consequence of erasures, or of defects in the solemnities of execution, or be objectionable from want of proper stamps—none of which irregularities would be discoverable from the usual form of extract. A necessity, therefore, would be imposed upon parties transacting, to examine the principal deeds in the General Register House at every transfer—a source of trouble and expense which would be fatal to the proposal.

Had the benefits to be derived from the proposal now under consideration, been nothing more than the saving of a small sum, in the few cases in which we can suppose execution to be required, we should not have thought it necessary to say more on the subject. But the plan embraces also the preservation of deeds, and thus involves other considerations, which we deem of more practical importance.

Advantages which would result.

(1.) The original deeds would be saved from the risk of being lost, damaged, or tampered with. At present, they are freely handed about from agent to agent, on borrowing receipts; and they are sometimes mislaid, or are difficult to trace—occasioning considerable expense and trouble.

(2.) When a proprietor sells a part of his property, he generally retains his own titles, and comes under an obligation to the purchaser to make them forthcoming to him at any future time when required. This troublesome obligation would be rendered unnecessary, or at least comparatively innocuous.

Certificate might be endorsed.

It appears to us that the difficulty to which we have alluded might be obviated, by providing that a careful examination should be made by the registrar of all deeds presented for registration, of which a probative extract was desired, with the view of ascertaining whether they had been properly and formally engrossed and executed; so that any mere technical objections might be at once detected, and if necessary rectified. After such examination, the registrar might endorse a certificate upon the extract issued by him, stating the following particulars:—

(1.) That the original deed is impressed with a stamp of a certain value.

(2.) That it is free from any erasures; or if any words appear to be written on erasures, what the words are, so that the parties interested might themselves judge whether the erasures were or were not material. And,

(3.) That the deed appears to have been signed by the granter and witnesses, and is, or is not, *ex facie* executed with the solemnities required by law.

Such a certificate would confer on the extract all the value of the original deed, except as regards questions of forgery, and thereby supersede the necessity of examining the original in the Register House, unless in very exceptional cases. Forgery of Scotch deeds, formally attested as these are, is scarcely known; and if in any case forgery were suspected, an exact fac-simile of the testing clause and signatures might be procured by writing to the Register House in Edinburgh, where arrangements could easily be made for making such fac-similes, at a trifling cost, by photography. These would be as available for the purposes of comparison as the original deed itself. But even supposing this arrangement were in any case impracticable or unsatisfactory, there would be little hardship in leaving the party, in such an exceptional case, to inspect the deed in the Register House.

If this plan were adopted, it would be necessary that the certificate should be made conclusive as to the facts set forth in it, so as to foreclose future challenge on any mere technical objections.

But cannot recommend its immediate adoption.

Under such a provision, we think that advantages might result from giving to parties an option of obtaining probative extracts, with (when wished) warrants for execution, of writs registered in the Register of Sasines, on condition of their allowing the original writs to be retained. But there are two reasons why we cannot advise the system to be made, at least in the first instance, compulsory. These are—(1.) That the subject has not yet undergone sufficient consideration, either by the public or the profession; and we found, in the course of our inquiries, considerable disinclination to part with original title-deeds. (2.) Although no security can be created for borrowed money by a mere deposit of titles, as is done in England, yet, by the operation of the law of hypothec, the agent of the proprietor acquires a certain *nexus* over the titles, when allowed to lie in his possession, for the amount of his law account.

Might be made optional.

Notwithstanding these objections—the former of which would be lessened by time, and the latter perhaps removed by new arrangements between agent and client—we are of opinion that, if the privilege were conferred on the public of availing themselves optionally of the provision, its advantages would become appreciated, and its adoption would gradually ensue.

How far applicable to Burgh Registers.

As respects deeds recorded in Burgh Registers, it appears to us that there would be nothing to prevent the same benefits being ultimately extended to them, if the principal deed (after being registered as usual) and the proposed extract and certificate were transmitted to the General Register House for examination. But perhaps it might be expedient to postpone the adoption of this plan, even optionally, in the local Registers, until it had been proved to work well in the General Register House.

Form of adhibiting warrant for execution.

Two difficulties of a technical character have been stated by the Deputy-Keeper of the Records, to the working of the plan proposed: (1) That it would require a new Office in the Register House to be opened for the preservation of deeds; and (2) that it would create (in cases of warrants for execution) the anomaly of a decreet or warrant issuing from the Register of Sasines, which is a mere statutory Register for publication, in lieu of the Register of Deeds, which is the record of a court. This might be obviated by a slight alteration in the proposed arrangements. The deed might, as at present, be registered in the Register of Sasines for publication, and then returned to the party, with the usual certificate of registration; but if he wished also to deposit it for preservation, and to obtain a probative extract, either with or without a warrant for execution, the keeper of the Register of Deeds might be authorized to receive the deed for permanent custody, and thereupon to issue a probative extract and warrant, without again engrossing it in the Register. The keeper, however, should enter in his Register a minute of the deed, and of the warrant, with a reference to the volume of the Register of Sasines for the full engrossment. The special certificates which we have recommended to be endorsed upon the extracts would, under this arrangement, be issued by and on the responsibility of the keeper of the Register of Deeds.

Improvement in registration of entails.

In connection with the subject of retention, in the Register, of recorded deeds, we have to suggest that, when a deed of entail is registered in the Register of Entails, the principal deed should be retained, and an extract only issued. Instances have occurred, in practice, of deeds of entail being set aside, in consequence of very slight erasures in the principal deed. One case is well known, where the erasure consisted merely of the letters 'irred' in the word 'irredeemably.' This was not alleged, in the case we refer to, to have been done fraudulently; but it is obvious that an heir of entail, contrary to what obtains in the case of the holder of a fee simple title, has often a direct interest to vitiate the deed of entail, so as to free himself from its fetters, and to acquire the full possession and disposal of the estate in fee simple. The principal deed of entail, therefore, when recorded, should not be allowed to remain in the hands of the heirs of entail, but should be transmitted by the keeper of the Register of Entails to the keeper of the Register of Deeds for preservation; and if an extract of it should afterwards be required, such extract should be issued by the keeper of the Register of Deeds, without a new engrossment. If thought advisable, the entry in the Register of Entails might be referred to in a minute inserted in the Register of Deeds, on the day when the extract is issued.

References to prior deed in lieu of descriptions.

Act 21 and 22 Vict., c. 76.

VI. We have already alluded to difficulties which have arisen, and which are aggravated by the double Registers of Sasines at present in use, from a provision which originated in a suggestion of the Scottish Law Commissioners of 1833, and was embodied in the 'Titles to Lands Act, 1858.' That Act permitted a reference to be made in conveyances of land, for the description of the land, to any previously registered deed in which a description is contained. Such reference, however, was only permitted (sec. 15) provided 'a *leading name* or some other *distinctive description*' of the property, and the name of the county and parish, were given in the new deed. Section 17 of the Act also permitted *several* lands, having different names or descriptions, when comprehended in one conveyance, to be designed and known in future by one 'general name' to be therein specified. But the 'Titles to Lands Act, 1860,' repealed section 15 of the Act 1858, and in its enactments went considerably beyond the recommendation of the Law Commissioners, by permitting reference to a former deed, without providing that any leading name or other distinctive description should be given, and without requiring even the parish to be stated in the deed. Under this last Act, deeds are beginning to appear in the Registers, in which there is literally no description, and, therefore, nothing capable of being properly minuted, or of being abridged or indexed. The practical working of the provision, as it now stands, is producing embarrassment in making up the Minute Books, and the Abridgments of the Registers, and also in searching, either by means of the Minute Books or of the Abridgments. In the cases we refer to it is necessary for the registrar, when making the entry in the Minute Book or in the Abridgment, either to refer to the previous entry in the Minute Book or Abridgment, for the description of the property, or to turn up the former entry, and import a description from it. In the latter case much time is lost, and there is imposed upon the registrar the responsible duty of giving, in the entry he makes, the description of a property with which he is not personally familiar. If, on the other hand, he inserts a mere reference to the former entry in the Minute Book or in the Abridgment, there is imposed upon the searcher, in making a search, the duty of turning up

Liable to abuse.

the previous volumes, and examining the entries in them containing the description of the property —which interrupts his work, and causes both delay and expense.

One case has been reported to us which forcibly illustrates this evil. Two conveyances of different properties, in favour of the same person, had been dated and registered on the same day. In a subsequent conveyance by the grantee, intended to give a title to a purchaser of one of these properties, a reference was made to the recorded conveyance in his own favour, in lieu of a description of the property; but the registrar was wholly unable to ascertain to which of the two properties the subsequent conveyance referred. An instance given.

We would suggest that the privilege of referring to a previously registered deed for the particular description of a property, should be again restricted to those deeds in which a leading name or distinctive description, capable of being entered in the Abridgment Books and of being indexed—and the parish—are both given. This would not to any material extent interfere with the object of the provision, which was to shorten deeds, and thereby lessen expense. Remedy suggested.

We would also suggest that the permission granted by the Act 1858, to confer a general name on several properties, when conveyed together, should be extended to all properties, although not made up of several parts, if not hitherto known by any general name. It appears to us to be worthy of consideration, whether the privilege of referring to a previously registered deed for a particular description of the property should not be farther restricted to those cases where a general name already exists, or where, under section 17 of the Act 1858, amended as we have now proposed, a general name shall have been assumed in the deed referred to. Extension of the Act 1858 recommended.

It is requisite that we should direct attention to the financial condition of the General Register House, in so far as the offices connected with the Registers of Land Rights are concerned, and to the reduction on the fees of registration and of searches, which we think might be made, either now or at some early period. Financial considerations connected with registration.

(1.) The first point to be considered is, whether any effect, prejudicial or otherwise, in a financial point of view, is likely to result from the measures we have ventured to recommend for the consolidation of the Registers. Assuming, as we do, that if any additional duty is thrown on the registrar—as, for instance, the writing of a Search Sheet—a moderate additional fee, corresponding to the nature of such duty, would be allowed, it does not appear to us that any of our proposals is likely to occasion a diminution of the revenue at present derived from registration, or to entail increased expenditure. On the contrary, we anticipate that in the financial working of the new system of registration, after the consolidation of the General and Particular Registers of Sasines and Inhibitions respectively, in the General Register House in Edinburgh, there will be a very considerable saving. Probable financial result of consolidation.

Setting aside, in the meantime, the effect of any future reduction of the fees of registration, the number of writs presented for registration, and the aggregate amount of fees paid on them, would remain the same, whether the registration were made as at present, or in the proposed new Register in Edinburgh. The only question, therefore, requiring consideration, is the comparative expense of the two systems. The average annual number of writs recorded for the years 1858, 1859, and 1860, in the nineteen Particular Registers of Sasines (excluding the one kept in Edinburgh, which is massed with the General Register), was 8684, and the gross fees drawn amounted to L.12,600. In the five smallest of these nineteen Particular Registers, the number of writs recorded in each was under 76, and the gross income under L.85. In the five largest, the number of writs varied from 600 to 2740, and the gross income from L.800 to L.5000. It is thus obvious that these Registers are of very different extent. While some of them yield an income greatly more than sufficient to remunerate a professional man of experience and skill for devoting his undivided attention to the duties of keeper, others afford so small a return as, after deducting expenses, to make the office an object not to be coveted by any man of standing in the legal profession. The consolidation of the whole Registers in one place would, in our opinion, enable the entire work to be done much more economically. We calculate that five superintendents in the Register Office—on each of whom, on the average, would fall the registration of less than 1800 writs annually—paid by salaries amounting together to not more than L.2500, to be each aided by four clerks, whose salaries together would probably not exceed L.2500, might do most efficiently the whole work of registration now performed by the nineteen keepers of the Particular Registers. We are confirmed in this estimate of what one superintendent can do, as well as of the number of clerks required to assist him, and of the cost of their services, by finding that, in the case of the largest District Register —where, on an average of the years 1858, 1859, and 1860, 2740 writs per annum were recorded—one officer was found sufficient for superintendence; and the average cost of the establishment, including salaries, books, office rent, and taxes, was under L.1250. We think it not foreign to the subject under consideration, to add, that all the arrangements in the office we refer to were found to be systematic and well carried out.

One source of economy as well as convenience in a consolidated Register, would be the power of mutual assistance, which the superintendents and clerks in the different county offices could afford to give to each other, by undertaking extra work at those periods of pressure which occur at the two money terms, in May and November. It is well known to men of business, that the frequency of transactions in land, especially at these terms, is much greater in certain parts of Scotland than in others; and that, in the agricultural districts in particular, the business of registration is more equally distributed over the year. In this way the pressure at the terms might be greatly relieved, without any permanent increase of the staff, and with only a temporary increase of expense, required as a remuneration for such extra work as might be necessary.

We have, therefore, come to the conclusion that a very important saving in the expense of registration would be the consequence of the consolidation of the several existing Registers of Sasines; and we think we are justified, after allowing for the cost of register books, and for contingencies, in estimating it at from L.6000 to L.7000 a year. Expected saving.

Surplus in Registers of Sasines in Edinburgh.

(2.) In the General Register of Sasines, and in the Particular Register for the Edinburgh District, the income and expenditure of which are kept in one account, a large surplus is annually accruing. The establishment consists of a keeper, assistant-keeper, five commissioned and twelve engrossing clerks. The average expense for the years 1858, 1859, and 1860, was, for the staff, L.3836, and for the books and other office expenses L.430 per annum; and the average number of writs recorded was 5721 per annum. The average amount of fees drawn annually for the same period was L.9504; so that there was a net annual surplus, after deducting the above outlay, of L.5236, available for any legitimate purpose.

Surplus in Searching Department.

(3.) In the Searching Department in the General Register House in Edinburgh, there is likewise a surplus. The staff in this department consists of four searchers at salaries of L.400 each, a superintendent of literary antiquities at L.300, four clerks, costing L.460, and the incidental expenses average about L.25. The amount of these items is L.2405, which, deducted from the fees (of 1860), L.2947, leaves a disposable net annual surplus of L.542.

Abridgment Department.

(4.) The Abridgment Department, including the construction of Indexes, yields no surplus. We understand the expense of this department is generally about L.1420 per annum; and it has hitherto been defrayed, as there are no fees receivable in it, by a special annual grant from Parliament. The number of clerks employed is fifteen, and the work is under the superintendence of the Deputy Clerk Register.

The four departments of Registration and Search to which we have now referred are exclusively devoted to deeds and writs affecting land rights; but we have also to advert to two other departments of a mixed character.

Surplus in Lord Clerk Register's Department.

(5.) The Lord Clerk Register's Department. Upon the account of this department there is, one year with another, an annual surplus of about L.2300. No separation has hitherto been made of the different sources of income and expenditure; and it is, therefore, impossible to state the particular source whence this surplus income has arisen. We assume, however, from the best information we can obtain, that the larger portion of it may be fairly attributed to the fees drawn in the Registers of Land Rights. The income of the department was until lately charged with a retiring allowance of L.600 per annum to a late keeper, but this has now ceased in consequence of his death.

Deficiency in other departments of registration.

(6.) The several Registers of Hornings, Inhibitions, Adjudications, and Interruptions, are all kept in one office in Edinburgh; but the accounts afford no means of distinguishing between the income and expenditure of each. The Register of Hornings has no connection with land rights; but looking to the number of hornings registered, of which and of the other writs above mentioned we have a return, it is evident that this foreign element may, so far as regards the present financial question, be thrown out of view. The establishment consists of a keeper and clerk, and costs L.720, while the fees realize L.642, leaving a shortcoming of L.78 per annum.

Prefer officers being paid by salaries.

From these details it will be observed that under the system of registration of land rights, as carried on within the Register House in Edinburgh, the officials employed in conducting it are remunerated by stated salaries, and not by fees. The changes we have proposed, embracing the consolidation of the double set of Registers of Sasines and Inhibitions, would place the whole on that footing. We decidedly prefer that the staff of a public office of this description should be remunerated by fixed salaries—not only because this is in general more economical, but because the right to draw fees gives rise to claims of vested interests, and presents obstacles, at every turn, to the adoption of improvements. Whether the salaries should, in the case of the working clerks, be absolutely fixed, or made to some extent dependant on the amount of business done, we shall presently have occasion to consider.

Want of a general account in Register House.

In the next place, it will be noticed that the financial accounts of the Register House, in so far as regards land rights, are at present kept in various separate departments, and are nowhere brought together in one account, to show the general income and expenditure of the whole registration and searching establishments. We have, for the sake of illustration, endeavoured to frame such an account for the year 1861, which will be found in the Appendix. We think that in future, without discontinuing the system of departmental accounts, a similar general account should be kept from year to year by the Deputy Clerk Register. It would be desirable, also, that those departmental accounts, which at present embrace more than the registration and searching connected with land rights, should be relieved of all extraneous entries, so as to show the financial position of the land registration of the country by itself.

Appendix, No. VII., p. 74.

Former and present systems of control.

At one time the income and expenditure of the Register House were not submitted to the ordeal of Parliament. The revenue received in each office, after defraying necessary expenses, was applied at once by the keepers to their own benefit. In the year 1829 the officers were placed on salaries, and the surplus fees (each office being regulated on the footing of its being self-supporting) were paid over to the Register House Commissioners in liquidation of a debt incurred. In 1846, the debt being then extinguished, the surplus fees were ordered to be accounted for to Government or applied as directed by Exchequer. For a long time, however, even after the system of salaries was adopted, the practice obtained, of the officers paying themselves their fixed salaries and their expenses out of their receipts, and handing over to Exchequer merely the surplus income. But since the passing of the statute 17 and 18 Vict., cap. 94, a better arrangement has been made. The whole salaries and expenses are placed on the annual estimates voted by Parliament, and the officers in each department pay over to Exchequer the gross amount of fees received by them, drawing in return the net amount of their salaries and office expenses. The change was, in our opinion, a very proper one; but the immediate effect has been, that the very large annual surplus of more than L.7000, as appearing on the account prepared by us, is now being appropriated to Imperial purposes, in place of being applied to the relief of the parties requiring to use the Registers.

Registration should be self-supporting.

The system of registration of land rights (excluding from view the first cost of buildings meant to endure for generations) ought undoubtedly to support itself—that is to say, the parties who are imme-

diately to benefit by registration should pay, in the shape of fees, what may be necessary to maintain it. On the other hand, it is inequitable and inexpedient that the fees of registration should be fixed so high as to yield a surplus revenue for the benefit of the State. We recommend, therefore, that the provisions made, by the appointment of (unpaid) Commissioners under the Act 3 Geo. IV., c. 62, for regulating the fees payable in the Lord Clerk Register's Department, and which provisions are now thought to be in abeyance, should be revived, and extended to the other departments of the Register House.

Present table of fees.

The present table of fees in the Lord Clerk Register's Department was fixed by these Commissioners on such a scale as to provide means for the construction of an addition to the Register House (long since completed and paid for), and was not intended to be permanent. The tables of fees in other departments, fixed partly by Act of Parliament and partly by Act of Sederunt, both equally call for revision. We have already stated the strong desire expressed to us in various districts for some relief from the unnecessary burden of these fees.

Total surpluses.

The aggregate amount of the annual surpluses available in the year 1861 for effecting reductions was L.7683, 13s. 3d., as shown by the general abstract in the Appendix. Although we do not feel assured of the absolute accuracy of this statement, it is sufficiently near the truth to enable us to rely on it for our present purpose; and an exceptional falling off which occurred in the business of the Register House in 1861, as compared with the average of the three preceding years, renders any estimate based upon it the more deserving of confidence. Besides that surplus, there would, as we have already explained, be a probable ultimate saving on the expense of registration as at present conducted in the Particular Registers in the country, to the extent of from L.6000 to L.7000 per annum; but we shall for the present take it at L.6000. These two sums would together amount to L.13,683, 13s. 3d.

Revenue increasing.

Appendix to Third Report of Scotch Law Commissioners, p. lv.

It is important to keep in view, that, in addition to these large sums, the gross income from registration and search is not stationary, but (excluding 1861) has for a number of years been steadily increasing. Thus, in the Registration Department, it appears, from a return made to the Scottish Law Commissioners in 1838, that the whole fees drawn throughout Scotland for the ten years, from 1821 to 1830 inclusive, yielded an average of L.11,923, 3s.; while the corresponding average income, as ascertained by us, for the years 1858, 1859, and 1860, was upwards of L.22,000.

Application of surpluses.

Assuming, then, that there is, or may soon be, a probable surplus income of about L.13,600 to deal with, the next question is, How is that sum to be most beneficially applied?

We have already recommended, as urgently and immediately required, the remission of the certificate fee of 7s. 6d. on the registration of each deed; which would at once, according to our returns, in which the total number of deeds is 14,405, absorb about L.5400 of this surplus.

There would still remain about L.8200; but as this sum is to a great extent made up of the savings to be effected on the consolidation of the double set of Registers, the whole of it would not, according to our previous recommendations, be available for reduction of fees for some years to come.

But whenever it may become possible, either by the continued growth of the revenue, or by the diminution of charges for compensation, to carry the reductions further, we have to recommend the following as, in our opinion, the abatements most urgently called for.

Graduated scale of fees for registration.

A new table of fees for registration should be framed, to be based on a classification of the property contained in each deed given in to the Register, according to its value. The fees payable on deeds affecting properties of small value should be greatly reduced, so as to afford a much needed relief to properties of that class to which we formerly referred. In the Act of Sederunt, 21st December 1849, by which the fees of registration were temporarily raised, the keepers of Registers were ordered to furnish an annual return of the number of deeds recorded by each of them, distinguishing, as far as possible, the properties of the value of less than L.2000, from those of a greater value. This turning-point would be much too high; and we have to suggest in its place L.500, which is the point fixed on to regulate abatements in the case of searches. But the details of such a scale might with great propriety be entrusted to the official gentlemen in the General Register House, under whose care the Registers are placed.

The fees in the Lord Clerk Register's Department, which press most heavily and are chiefly complained of, are those charged for the use of each volume of the Register for the purpose of search, and those for official 'Extracts' issued from that department.

(1.) *As to Charges for use of the Register for Searches.*

Fees of searching.

We have stated already, that, in a search for the usual period of forty years, the charge made for access to the volumes of the Registers in the General Register House is L.2, 10s., to which have to be added the charges made for books in the District Registers of Sasines and of Inhibitions, if the search is continued there, and in the General Register House again, if, as is generally the case, it requires to be brought down to the day on which the transaction is settled, and the conveyance or bond recorded.

These charges, which are over and above the fees charged for the time and trouble of the official searcher, appear to us exorbitant. We recommend, therefore, that they should as soon as possible be very largely reduced. The English Real Property Commissioners, who contemplated, in the system recommended by them, that the fees of the establishment should defray its expenses, proposed a scale of fees for registration greatly lower than ours, and a charge for searches little more than nominal. They give, in their Second Report, the following estimate of the average expense of registering a deed.

Second Report of English Law Commissioners, p. 78.

The expense, they say, would be:—

6s. for registering.
2s. postage to town.
8s. office copy to be sent down to the purchaser.
2s. office copy postage down.

18s.

Second Report, p. 79.

As to the charge for searches, they say: 'In some cases, only an office copy of the Index, under the symbol, during a certain period will be required, for which, on the average, a charge of 2s. 6d. would be sufficient. When a search in the Index to the Roots of Titles or in the Index of Wills is required, it might be made by the officer, and a certificate given of it; and five shillings would be a sufficient charge for each search.'

We do not expect that the charge for searches in our Registers can ever be reduced so low, seeing that we have been unable to recommend a search by 'symbols,' as intended by the English Commissioners; but we quote the passage to show the very trifling sum to which they thought it desirable and possible to reduce the fee, for the use of the books of a Register in making a search.

(2.) *As to Extracts from the Registers.*

Fees of Extracts.

The fees at present charged for extracts from the Register are 5s. per sheet of 300 words, besides 1s. per sheet for writing; in addition to which 2s. 6d. is payable for stamp duty on each sheet. These fees also are excessive, and we recommend that a large reduction of them should be made as soon as possible.

Report (No. 36), ordered by House of Commons to be printed, 19th Feb. 1829.

We also beg to direct attention to the recommendation in the Report of the Commissioners under the Act 3 Geo. IV., c. 62, that no stamp duty should be levied upon extracts. Most of the deeds, of which extracts are issued, have already paid heavy stamp duties (most of them *ad valorem*); and it appears to us to be unjust, and against public policy, to subject such deeds to a further stamp duty when an extract is required. It is a tax upon registration; which is impolitic in itself, and is not a legitimate source of national revenue.

Relief not confined to reduction of fees.

In making these suggestions for a reduction of the official fees, more especially of those in the Searching Department, we think it right to call attention to the fact, that the relief to the public, consequent on the adoption of the measures we have proposed, if we are right in our estimate of their effects, would not be limited to such reduction, but would be increased to a very considerable extent, by the saving of time and labour which these measures are calculated to effect.

Financial position of Burgh Registers.

We have still to notice the present financial position of the Burgh Registers, and the effect of the changes we have suggested upon them. The Town-Clerks in royal burghs, as keepers of the Burgh Register, are none of them, at present, remunerated by salaries, but have right to the whole of the fees payable to them for registration or search. We find, from the return made by the Town-Clerks, in obedience to an order of the House of Commons, dated the 13th March 1856, and ordered to be printed the 25th July same year, as well as from the answers to our own inquiries, that the fees which are now exacted by these officials for registration, searching, and extracts, are very different in the different burghs. The fees demanded for registration range from 2s. up to 6s. per sheet or folio of the Record. A charge is made, in many burghs, for the minute and certificate of registration, of from 3s. 6d. to 7s. 6d. on each deed. In some burghs, as compared with others, a quite different rate of charge is made on bonds and discharges. In many burghs no charge is made, to an agent making a search, for the use of the books. In others the charge is as high as 2s. 6d. for each volume of the Register. For a search made by the Town-Clerk himself there is almost every variety of charge, from 6d. up to 2s. 6d. each year, or each volume, besides from 2s. 6d. to 5s. 6d. for the certificate. The authority stated for making these charges is nearly as various as the charges themselves. It is said by some to be use and wont; by some to be an order of the Magistrates; by others to be the Acts of Sederunt 10th July 1811 and 21st December 1849.

Return ordered by House of Commons to be printed, 25th July 1856.

Variety of charges is objectionable.

It seems to us to be highly objectionable, that such an unregulated variety of charges should prevail; and we suggest that the Court of Session, which is authorized under the Titles to Land Act, 1860, to regulate these fees, should, after such inquiry into the circumstances as they may deem necessary, introduce uniformity, either immediately, or, in case of vested interests, on the death of the present incumbents. There is great reason to doubt whether the authorities referred to by the Town-Clerks justify the charges made by them. There is no Act of Sederunt in 1811 referring to *Burgh* Registers of Sasines; and we cannot find any warrant in the Act of Sederunt 1849 for the increased charge, of 1s. per sheet, and 7s. 6d. for the minute and certificate, lately introduced by some burgh registrars. The Act in question does not appear to us to apply to Burgh Registers, but only to the General and Particular Registers of Sasines.

Oppressive character of fees.

As a proof of the extent to which this extra-parliamentary municipal taxation has been carried, in support of the monopoly of the Town-Clerks in some of the burghs, we may give an instance, stated to us by a respectable practitioner in one of them. In the burgh referred to, the Town-Clerk had been in office prior to the passing of the Titles to Lands (Scotland) Act, 1860, by which the length of conveyances of properties held burgage was greatly shortened, and sasines were abolished. By a saving clause in that Act, the Town-Clerks then in office throughout Scotland were entitled, during their respective lives, to continue to charge, for registration of conveyances, the same fees they had formerly charged for preparing and registering the sasine. Our informant had prepared for his clients, who had a *pro indiviso* right to certain properties within the burgh, two conveyances, one in favour of each client. The conveyancer's fee for drawing these two deeds was L.4, 4s. each. The Town-Clerk's fee for recording them, charged under an old table passed by the Magistrates of the burgh in 1802, was L.21 for each.

Internal arrangements and staff of the Register House.

As immediately connected with the subject of finance, although involving other considerations, we think it right to offer some observations as to the necessity for remodelling the internal arrangements and staff in the General Register House, which would undoubtedly arise if the whole Registers of Land Rights were concentrated there. At the same time, we do not feel that our knowledge of the different departments in the Register House is such as to justify us in speaking, with confidence, as to the exact *details* of the changes which would be required.

We are not disposed to recommend any immediate change on the existing arrangements, either for the custody of the completed volumes of the different Registers, or for the issuing of extracts of deeds or other documents, or for the marking of blank volumes to be issued for the use of the registrars, or for the superintendence of the Searching Department, so long as a separate establishment is required for that purpose. It appears to us that these duties might, with propriety, be allowed to continue with the Deputy Clerk Register, assisted by the Deputy Keeper of the Records.

Necessity of one head in registration of land rights.

But we are of opinion that the control of the whole system of registration, including the compilation of the Abridgments, Indexes, and Search Sheets, should be placed under one head. The benefits which result from concentration, as regards both administration and responsibility, could not be secured, unless that system were placed under one properly qualified public officer, who should be made responsible for its practical working.

Sub-offices under superintendents.

Under the charge of such an individual, acting as head of the office, there should, we think, be placed the following sub-offices. (1.) Registration, including the keeping of the Register of Inhibitions and Adjudications, should be conducted in eight sub-offices (including the five already mentioned), each under the immediate charge of a superintendent, with the necessary staff of clerks; (2.) The compilation of the Search Sheet should be under one superintendent and clerks; and (3.) Abridging and Indexing should be under another superintendent, with the aid of clerks. As soon as the operations entrusted to these superintendents have been completed, the volume compiled by them should be transmitted to the Deputy Clerk Register, or Deputy Keeper of the Records.

Duties of the several officers.

In this proposed mode of arranging the establishment, the duties of its head should be entirely those of general responsible direction and control; while those of the superintendents should correspond with what now fall on the Keepers of the General and Particular Registers.

Efficiency and cost.

As to the efficiency and cost of such an establishment, we may say generally, that the calculations we have made lead us to the conclusion, that the system might, with the proposed staff, be conducted with regularity and economy; and that, so long as the present scale of fees is maintained, the surplus revenue we have estimated might be relied on.

Official searchers' remuneration and clerks.

Before leaving the subject of office arrangements, we may notice that representations were made to us by the official searchers, and by some of the office clerks in the Register House. The former complained of the inadequacy of their remuneration, and the latter of the uncertainty of their position. But it does not appear to us that such details are within the scope of our commission, unless in so far as they affect the public interest. It is properly left to the discretion of the heads of departments in all great national establishments, such as that of the Register House in Edinburgh, to regulate the details, and to provide the staff necessary to carry on the business entrusted to them, for the due execution of which they are held responsible.

But, as bearing on the remuneration and position of all the salaried officials in subordinate situations in the Register House, two things occur to us as worthy of consideration: (1.) Whether means might not be taken, by allowing extra pay for extra work, to stimulate them to the full exertion of their powers. The advantages of such an arrangement are, that the amount of ordinary work expected from every individual is fixed according to a certain standard, and that any one who is able to do more has the advantage of additional pay. (2.) Whether provision should not be made for superannuation, so as to secure against even the best public officer remaining on the active list, after he ceases to be able to discharge his duties with full intelligence and accuracy.

SUMMARY.

To effect many of the changes we have recommended, an Act of Parliament will be necessary. It appears to us, however, that such an Act should embrace only those fundamental changes for which direct legislation is indispensable, leaving the details to be regulated from time to time in the manner after mentioned.

The chief matters which we suggest for legislative enactment are the following:

I. That the present double Registers of Sasines and Inhibitions, and the separate Registers of Adjudications and Interruptions of Prescription, should be abolished; and that, in lieu thereof, there should be established in the General Register House, subject to the provisions we have proposed—(1) One Register of Sasines to be kept by counties, with relative Minute Books and Presentment Books, and that this Register should contain also the Register of Interruptions of Prescription; and (2) One General Register to contain inhibitions and adjudications.

II. That inhibitions and adjudications should be regulated in accordance with the recommendations we have made.

III. That every deed affecting land presented for registration, which may not contain, *in grœmio*, the county and parish in which the land lies, should have endorsed upon it before it shall be registered, a Minute, stating these particulars; and that the Titles to Lands Acts (Scotland), 1858 and 1860, should be amended in the manner proposed.

IV. That printed copies of the Abridgments and Indexes, and of the Presentment Books, should be periodically transmitted to the sheriff-clerks of all the counties in Scotland, and to the town-clerks of such royal burghs and large towns, as may from time to time be fixed; and that these Records should be open to the public, on payment of a reasonable fee.

V. That the unpaid Commission appointed by the Act 3 Geo. IV., cap. 62, should be revived, and authorized to regulate from time to time the financial details of registration and searching; and, in particular, the emoluments of the officers employed therein, and the fees to be paid for registration, for extracts from the Registers, and for searches. Provision should also be made, that the surplus income arising from such fees should in future be applied by the Commissioners to registration or searching purposes, or in reduction of fees.

VI. That extracts of deeds should be written upon unstamped paper.

VII. That, after a date to be fixed, it should be an absolute condition of the registration of a deed in the Register of Sasines, that a Minute of it should be simultaneously entered in a 'Search Sheet,' to be commenced and continued in the manner which we have recommended, and to be retained permanently in the General Register House; and that provision should be made for duplicates of such Search Sheets being issued, and the entries therein continued, and also for certified copies of the Search Sheets being issued to feuars or others acquiring portions of a property.

VIII. That probative extracts, either with or without warrants for execution, of deeds previously recorded in the Register of Sasines should be issued, without the deed being again engrossed in the Register of Deeds, the principal deeds being, in such cases, left in the custody of the keeper of the Register of Deeds; and farther, that principal deeds of entail, when registered in the Register of Entails, should be transmitted to, and retained in the custody of, the keeper of the Register of Deeds.

IX. That the Registers of Sasines in royal burghs should be regulated and subjected to supervision, in the manner we have proposed; that all future infeudation of burghal property should be prohibited; but, to provide for property already feudalized, the sasines of all lands lying within the burghal territory, whether held by burgage or feudal tenure, should hereafter be registered in the Burgh Register exclusively; and that all past registration of property situated within burgh, in whatever Register it may have been made, should be free from challenge, on the ground of irregularities either in the holding or in the registration, unless impugned by proceedings in Court commenced prior to the passing of the statute.

X. That the Sheriffs of counties should be authorized to divide parishes and burghs into registration districts, when applied to for that purpose in the manner we have pointed out.

XI. That the Court of Session should be empowered, on an application to be made by the Lord Advocate and Lord Clerk Register, to make provision from time to time, by Act of Sederunt, for carrying into effect any of the other measures we have recommended, which may require to be so sanctioned, and also to regulate any matters of detail; but we would suggest that, before such Act of Sederunt is passed, an opportunity should be afforded to the different professional bodies who have an intimate practical knowledge of the subject, of considering and being heard on the proposed enactments.—We have the honour to be, SIR, your faithful and obedient servants,

CHARLES MORTON.
ANDW. BANNATYNE.

July 1862.

Addition referred to at page 31.

With reference to the note at page 31 of the preceding Report, I have to add that it appears to me to be of great importance, in the practical working of the plan of 'Search Sheets,' that the duplicate, intended to accompany the progress of titles, should, if possible, be sent to the registrar, along with every deed delivered or transmitted to him for registration. Its transmission would greatly facilitate the work of the registrar, in at once identifying the property, and in tracing the principal Search Sheet in the Register House. The duplicate would be especially useful in case of any error in stating in a deed its Search Sheet number, and in any other cases where unforeseen difficulties may arise. The duplicate would also be more valuable to its owner, if it were regularly brought down to the date of registration of the latest registered deed, as is the case with the Register of Ships. I am therefore disposed to recommend, as a general rule (though not as a condition of registration), that the duplicate Search Sheet should accompany every deed delivered or transmitted for registration; and that, in any case where it might not so accompany the deed, the ingiver should be bound to state to the registrar, in writing, the cause of its non-transmission. The registrar might be empowered thereupon to issue an order for its transmission to him within a limited period, which order might be capable of being summarily enforced, against any third party in possession of the document, by means of a warrant, to be endorsed upon the Registrar's order, by the Lord Ordinary on the Bills, or by any Judge Ordinary. To facilitate the process of recovery of the duplicate, provision might also be made that it should not be subject to any rights of lien or hypothec. Farther, it might be provided that the party who registered the deed should, within the time fixed by the registrar, either transmit the duplicate, in order that a minute of the deed might be entered upon it, or show cause, in writing, for his failure; and if his explanations were unsatisfactory, the registrar might have power to impose a penalty for each day of subsequent failure. Provisions of this description, or others similar to those of the Merchant Shipping Act, for enforcing production of a ship's Register, in order that any deed which had been recorded when the Register was with the vessel on a voyage should be entered on it, would, I think, be found effectual; while the knowledge of the legal profession, and of the public, that the duplicate, if not exhibited at registration, must be exhibited shortly thereafter, would ensure its transmission in almost every instance.

17 & 18 Vict., c. 104, § 45 et seq.

It was with reference to this transmission of the duplicate to the registrar that I recommended in the Report (p. 30), in cases of sub-feus, or of sales of a part only of a piece of land, that the feuar or purchaser should get a certified copy, in place of a duplicate, of his author's Search Sheet. In such cases, the copy given to the feuar or partial purchaser would be complete, in so far as his interests are concerned, and would not require to be brought down from time to time. The copy given to him should therefore, be of a different kind from the duplicate Search Sheet of the original property, which requires to be so brought down.

I do not participate in my colleague's fear, that provisions of this description would lead parties to place undue reliance upon a duplicate Search Sheet. If, however, any such risk should be thought to exist, it might be fully obviated by every duplicate having a notice printed upon it, that it is only to be relied on to the date of the last authentication by the registrar. Neither do I anticipate that such

provisions would produce any complexity in the working of the Search Sheet; for, as already stated, the existence of a rule requiring the transmission of the duplicate would, in almost every case, ensure its transmission along with every deed sent in for registration; while, in the absence of such a rule, it is probable that much laxity in transmitting the duplicate would arise.

July 1862. CHARLES MORTON.

SUPPLEMENTARY REMARKS.

After our Report had been nearly completed, and had been put into type, Sir William Gibson-Craig, Bart., was appointed to the important office of Lord Clerk Register, which had for some time been vacant. At his request, and with the permission of the Lord Advocate, we sent the proof-sheets to him, and to Mr W. P. Dundas, Mr Robertson, and Mr Brodie, the heads of the different departments in the Register House, in order that we might have the benefit of the opinions of gentlemen possessed of so much practical knowledge and experience on the suggestions we had made. We had subsequently two long interviews with them, and we feel much indebted to them for the fair and impartial spirit which characterized the observations they then submitted to us. In a few cases, where corrections of a slight character could be made on the text, to give effect to suggestions which appeared to us valuable, we have done so. But there are some matters of greater importance and difficulty, on which we do not agree with their views; and these we now propose shortly to notice.

The first point which was brought before us was the value of the Index of Places suggested by Mr Thomas Thomson, but which, after being begun, and completed for the period from 1780 to 1830, was discontinued upwards of ten years ago. It was represented to us by Mr Dundas and Mr Brodie, that the discontinuance of this Index had been caused solely by a temporary want of funds, and that it would be of the utmost importance to resume it. Concurring, as we do, with all the higher officials in the Register House, in their opinion as to the value and necessity of having *some* kind of Index leading directly to lands themselves, irrespective of the names of the owners, we still differ from those of them who are of opinion that the Index of Places may be beneficially resumed. We think it unnecessary, however, to do more now than refer to the full statement of the grounds of our opinion contained in the Report, and to the opinion of the Deputy Keeper of the Records—given to the Committee of the Faculty of Advocates—and of the searchers, communicated to us in answer to queries addressed to them,—all of which will be found in the Appendix. The Parish Index, which we have proposed as a substitute for the Index of Places, was objected to on separate grounds, which are deserving of much consideration. Appendix, No. IV., pp. 62, 64.

(1.) It was stated that it would be attended with great inconvenience and risk to enforce the insertion of the name of the parish in every deed affecting real property, and especially superiorities, under the penalty, in case of failure, of their registration being held null. This point is one more for the consideration of conveyancers than of registrars; and we attach great weight to the adverse opinion of Mr Brodie, who has been for many years in extensive practice as a conveyancer. We have, therefore, again carefully considered the question; but we have not been able to satisfy ourselves that the difficulties which Mr Brodie anticipates will turn out to be of a formidable character. At present, nearly all deeds affecting land, whether property or superiority, mention at the end of the description the parish in which the lands lie. In the rare cases where the *parish* is not mentioned, the *locality* is always indicated, more or less perfectly, by the terms of the description; so that a very little inquiry by the agent employed, or the proprietor or his factor, or an examination of the Valuation Roll or of the Ordnance Map, would enable him to state with accuracy, in any new conveyance of such property or superiority, the parish or parishes in which it is situated. The utility of the maps in this respect is so much appreciated in Ireland, that the Irish Registration Bill, which was before Parliament last year, contained a clause making it imperative that the name of the townland, as contained in the Ordnance Map, should be given in the Memorial of the Deed presented for registration; and we understand that if the Bill shall be again introduced this session, a similar provision will be contained in it. Further, it will be kept in view that if there should remain in any case some uncertainty as to a parish, the simple remedy suggested in the Report, of stating two or more parishes, would prevent the risk of error and of null registration. The inconvenience and trouble occasioned, in the few cases in which inquiry might become necessary, could occur only *once* in reference to each property, as, after the name of the parish is obtained and fixed, it would form in all future titles a part of the description.

This question was more or less under the consideration of the legal bodies, to whose reports on the subject of registration we have already referred.

The Committee of the Faculty of Advocates state in their Report, that it had been suggested that it should be made imperative, under sanction of nullity, to mention the name of the parish in a conveyance; but that they were not prepared to approve of multiplying grounds of nullity. They do not, however, suggest any practical difficulty as likely to arise in ascertaining the parish, where it did not previously form a part of the description. They add, with reference to the difficulty they felt as to adding a new ground of nullity, 'It is true that, if the insertion of the parish were to afford the means of making up a complete and secure Register of easy reference, the Committee would consider that all minor objections should give way to so great an object. But they do not see that, at present, the insertion of the parish, however desirable, is of such paramount importance as to warrant an enactment rendering it an essential part of the legal description of subjects contained in any recorded writ; and any enactment which fell short of this would be insufficient for registration purposes. In every case, however, in which the parish or parishes are stated on the face of the writ, the name of the parish or parishes should be marked on the margin of the Abridgment Book. This is already done in the Report, Faculty of Advocates, 1857, p. 27.

Minute Books of the Particular Registers; and it could as easily be done in the volumes of the General Register when classified by counties, and also in the printed Abridgments.'

The modified plan which we have suggested, of rendering the name of the parish an essential of registration (but not affecting the validity of the deed), seems not to have been under the consideration of the Committee.

Report of W.S. Committee, 1857. P. 23, P. 24.

The Report of the Committee of Writers to the Signet does not expressly deal with this subject, but it contains the following remarks on the utility of the name of the parish being rendered available in all cases as the key to a search; 'As to the contents and form of the Abridgment, your Committee is of opinion that its value would be enhanced if the name of the parish were printed on the margin of each entry. This addition to the Particular Registers was of the greatest service to men of business when they conducted a search by means of the Minute Book. . . . . If it were practicable to arrange the *Indexes* by parishes instead of counties, the number of references to the Abridgment, in connection with particular names, would be greatly diminished.'

S.S.C. Report, 1857. Pp. 14, 15.

The point, however, seems to have been most fully considered by the Committee of the Solicitors before the Supreme Courts, who report as follows; 'It will at once be obvious that the accuracy and usefulness of the contemplated Indices would be greatly enhanced, and the time of the searcher saved, could a plan be adopted combining some uniform, ready, and authentic key to the object of the search. After mature consideration, the Council feel disposed to recommend, as the plan least liable to objection, that it should be made compulsory to have the *parish* of all lands affected by any deed upon record, distinctly set forth not only in the body of the record, but also upon the margin thereof. For this purpose it would, of course, be necessary to have legislative authority; and the Council would therefore suggest that an Act of Parliament should be obtained, making it imperative that every writ presented for registration, and affecting lands, shall bear the name, or *supposed* name, of the parish or parishes in which they are situated. Merely to enact this, without some corresponding compulsitor to enforce its observance, would be nugatory; and to declare the writ null for the omission, might be too severe a penalty, leading to much hardship and confusion. The simpler and more efficacious way would be to declare that the keeper should have power to refuse to register any writ not containing the name of the parish applicable to the lands in question. The observance of such a provision, both by the agent who prepares the deed and the officer who records it, is very easy. On the one hand, if the conveyancer who prepares a title has already the name of the parish in the progress, he repeats it; if it is not there, he has only to inquire and specify the parish, or *supposed parish*, in which they are situated, and so insert it.'

Report, Glasgow Procurators, 1856, P. 8.

The Committee of the Faculty of Procurators in Glasgow also directed their attention to the insertion of the names of parishes in conveyances. They say, 'It is proposed that the Minute Books, in place of being kept as at present, should be kept in a tabular form, similar to that in Schedule A (annexed to their Report), giving in columns the *parishes*, which *in all cases* should be required to be set forth in the Sasines or other writs.'

It appears, then, that these four professional bodies, in reporting on the subject of registration, and having before them a proposal to render the insertion of the name of the parish imperative, did not suggest any practical difficulty as standing in the way of ascertaining the parish when it might not be mentioned in previous deeds; while all of the bodies recognised the importance of deeds declaring it, quite irrespective of the proposal we have now made to substitute a Parish Index for an Index of Places.

(2.) It was also objected to the proposed Parish Index, that an independent search or even a check search in it, would be so operose as to be of no practical value in ordinary cases of searches for incumbrances. We admit that, if a search in the proposed Parish Index were to be regarded as a check necessary, or even desirable, in *all* searches of this description, the delay and expense would be a formidable obstacle to its use. But, as stated in our report, the cases in which such a search would be required are the exception and not the rule; and whether it be made in an Index of Places or in a Parish Index, the machinery must unavoidably be of a complex character. All, therefore, that can be done in regard to either is to make it as workable and as perfect as possible; and we think the Parish Index would be as available for this particular purpose as the Index of Places.

But the proposed Parish Index is not of value solely as a substitute for the Index of Places. By the subdivision and classification of the Index of Names, it affords, as explained by us in the Report, new facilities for conducting the every-day search in that Index, and will materially diminish the expense.

Report, Registration Commission, 1850. Appendix IV., p. 170.

The value of such facilities is well stated by Mr Robertson, the Deputy Keeper of Records, in a Memorandum which he submitted to the English Registration and Conveyancing Commission, whose Report was laid before Parliament in 1850. After showing the difficulties attending a search in the Index of Places, and to a smaller extent in the present Index of Persons, and suggesting some changes whereby they might be in part obviated, Mr Robertson continues; 'The objections stated, too, would be greatly obviated were there a further subdivision from the *county* arrangement, in which these Indices are prepared, to an arrangement of the names of persons and of places under the heads of *parishes*; as it must be obvious that the more limited the district to which the Indices apply, the readier will information be gathered from them. It would be much easier to search against a property lying in a particular parish, were all the information relative to properties in each parish collected and arranged under different heads; for, in that case, it would only be necessary to look into the part of the Index applicable to the particular parish in question; whereas in searching Indices prepared under a county arrange-

ment, the searcher is perplexed and puzzled with the number of names (in many instances similar names, both of places and of persons, occurring in the Indices), which have no reference whatever to the subjects of his search.'

On the whole, then, we adhere to our recommendation of a Parish Index as preferable to an Index of Places.

While on the subject of Indexes, we may take the opportunity of stating, that since the date of our Report, we have been in communication with Mr Morgan O'Connell, the Registrar of Land Rights in Ireland, who has explained to us shortly the system in use in the Irish Registry of Land Rights, and certain improvements in the Index of Lands which have recently been suggested. One of these is the adoption of Townlands, as the unit of registration, which had been strongly urged by Colonel Leach, on the attention of the Irish Government in 1860, and afterwards submitted to the public in a pamphlet, entituled, 'Suggestions for Improving the Mode of Registering Deeds in Ireland.' A letter from Mr O'Connell to us, and an extract from a letter addressed by Mr Ray, the chief clerk of the Irish Register, in November 1861, to the Secretary of the Treasury, which was laid before the House of Commons and ordered to be printed, are given in the Appendix, and to them we refer. It appears from Colonel Leach's pamphlet, as well as from these papers and the specimen Indexes which accompanied the latter, that the same difficulties which are experienced in Scotland in framing an Index of Lands, arise also in Ireland. The principle both of the present and of the proposed new Irish Index, seems to be the same as the Parish Index which we have recommended, viz., to lessen the area of search. In the present Irish Index, the name of each person or place is given under the head of the Barony (in the proposed new Index they would be under the head of the Townland) instead of a reference, as in the Scotch Indexes, to the number in the County Abridgment Book. We have handed the specimens of the Irish Indexes to the Deputy-Keeper of the Records.

No. 191. 29th April 1862. Appendix, No. IV., p. 63.

The second point on which doubts were expressed at our interviews with the official gentlemen of the Register House, was the expediency of rendering the 'Presentment Book' proposed by us an essential part of registration. It was stated to us that there could be no doubt of the value of such a book as a guide to the registrar, and that it might even be of use as an ingredient of evidence in fixing the date and priority of presentation of deeds. It was admitted, therefore, to be desirable that such a book should be kept, but it was urged that it would be inexpedient to introduce, through it, a new statutory requisite of registration.

We are quite ready to admit that it is an important object to avoid adding to the number of the steps requisite to due registration. But there are two very important objects affecting the security of the records, which still require to be attained, by some means or other: *first*, to fix the actual date of registration; and *second*, to regulate the priority of registration, as between competing rights. By the early Scots Acts, to which we have referred in the Report, these were to be authoritatively fixed by the entry of each writ in the 'Minute Book,' which entry was to be made at the time of presentation, and to be signed by the presenter of the writ. There was thus intended to be established a statutory security—the evidence of the Minute Book being meant to supersede all other proof of the facts. We have explained that the form thus enjoined is now in non-observance. The writs, after being marked with the day and hour of presentation, and by some registrars with a running number in pencil (which markings are not recognised by the statutes), are kept by the registrar beside him; and the entry in the Minute Book, which is the only statutory evidence, is in practice not made until after the lapse not merely of hours but of days, and sometimes even of weeks, and is seldom even then signed by the actual presenter of the deed. In stating this, we do not impute any blame to the registrars. The delay is found to be unavoidable, from the increased number of the writs presented for registration in many of the Registers, and from the difficulty in all of them of framing, at the moment of ingiving, a minute in terms of the statute, and with the requisite accuracy of detail. It appears to us that this state of matters calls for amendment. It is true that up to this time, no dispute or competition of rights appears to have arisen out of the very loose system pursued. But if a dispute or competition should arise, in consequence either of the carelessness or the fraud of a registrar, it is obvious that difficult questions might be raised, and that very great injustice might be done, if the statutory rule, which appears to us to exclude all evidence of the facts other than the Minute Book, were to be enforced. To the extent, therefore, of providing some conclusive written evidence of the date and priority of registration, capable of being completed at the moment of giving in a writ, and in presence of the ingiver, as contemplated in the early statutes, we are decidedly of opinion that a change is necessary.

Pp. 1 and 2.

The present Minute Book, as we have explained in our Report, performs the further duty of enabling a search for incumbrances to be made during the period for which the Abridgment and Indexes are in arrear. But for this purpose also the Minute Book is defective, in so far as it is often itself unavoidably in arrear; and the difficulty and risk of supplementing it by an examination of the original writs, which are partly in the hands of engrossing clerks, and partly in different sections of the office during the operation of being minuted, are so great, that most of the official searchers now decline to give a search beyond the date to which the Minute Book is completed. This is a most serious practical grievance, embarrassing daily transactions, and it is indispensable that an immediate remedy for it should be provided. The next consideration, therefore, is whether any change that may be made on this part of the system of registration might not be so contrived as to combine a return to the original plan of fixing the date and priority of registration by an immediate entry in one of the Books of Record, with an improvement in the means of bringing down a search to the latest date.

P. 7.

It was with this twofold object that we suggested the form of 'Presentment Book' given in our Report. For the first object, it is only necessary that the entry in the Presentment Book should

P. 16.

record the date of presentment, and such particulars of the writ presented as may serve to identify it. For the second object, the names of the parties to the writ, the parish in which the lands lie, and a short description of them, are each separately of service, but are all required together (unless superseded by the Search Sheet number) to render the entry complete. If the new book we have proposed should prove successful, it would not only fulfil all the functions of the Minute Book, and enable it to be hereafter dispensed with, but it would in the meantime furnish a safe and easily consulted record by which the searcher might complete his search for the period in which the Minute Book is in arrear. We have not, however, thought it prudent at once to recommend the abolition of the Minute Book, as it appears to us better, to suffer for a time the inconvenience of an additional statutory requisite in registration, than to run the risk which would necessarily attend exclusive reliance on a hitherto untested measure.

At our interview with the officials of the Register House, it was urged that there would be much risk of error arising in a book compiled from hour to hour, as a Presentment Book must necessarily be, and that it could not be relied on as an aid to the searcher. We do not concur in this fear. Our suggestion is, that the entries in the Presentment Book should be made, not, as at present, by the ingiver or his clerk, but by the registrar, or a qualified officer acting under him; and that the portions of the entries made at the moment of presentation should embrace only such matters as are apparent on the face of the deed. These would be sufficient for its identification in fixing priority of registration, and sufficient also for the searcher's purposes during the period while the Minute Book remained incomplete. The insertion of the name of the parish in the first column would greatly restrict his labour. The other requisites for a complete entry, such as the condensed description of the lands, we propose
Report, p. 21. should be added afterwards, upon a careful examination of the deed. In framing the original entries in the Presentment Book, there would be no risk of error beyond what ordinary care on the part of the registrar would fully meet. If, however, it should still be thought that some error might occur in entries made at the moment of ingiving, all dangerous consequences might be prevented by conferring power on the registrar, in the evening of each day, to collate the entries of that day, and to correct any error which might be found, upon a re-examination of the writ—marking the correction with his initials. If that course were adopted, it might be provided that the searchers should not rely on entries in the Presentment Book till after such collation.

This question of a Presentment Book was also considered by the legal bodies whose committees
Faculty's Report, pp. 8, 9. reported in 1857. The Committee of the Faculty of Advocates say, in their Report: 'For instance, though quite sensible of the impracticability at the present day of obtaining the signatures of the presenter and of the keeper to a minute completed in its present form at the moment of ingiving, the Committee think that, by an enlargement of the plan of the Presentment Book, the whole requirements of the statute 1693, c. 14, may even now be very easily and effectually complied with.'

The only other point of importance which was submitted for our reconsideration, was the proposed 'Search Sheet.' The value of this measure, as limiting the area of search in the Register to the single folio appropriated to the property searched against, and as gradually introducing into every complete progress of titles an authentic duplicate of the principal Search Sheet, was admitted. But it was urged that there were practical difficulties attending the Search Sheet—as, for instance, the number of volumes which would be required for engrossment, and the difficulty of calculating the vacant space to be left, at the opening of each new Search Sheet, for the future entries to be made in it relating to the same property. It was also stated that the office accommodation in the Register House required for the new series of volumes thus rendered necessary in connection with each County Register, might not be easily found, without time being allowed to make the requisite arrangements; and that, at all events, it was inexpedient to undertake the construction and adjustment of such novel machinery as the Search Sheet involves, at a time when the whole attention and strength of the establishment would be required to establish the new system of county registration, the accelerated preparation and the printing of the Abridgments and Indexes, and the transmission of full copies of these to each county and large provincial town in Scotland.

It is no doubt expedient that full time should be allowed for consideration of the details requisite for ensuring the successful working of the measure. It appeared to us, however, that in the guarded recommendations we had made in our Report as to the gradual introduction of the new system, and in the fact that the adoption of the Search Sheet would not in any way impair the efficiency of the existing arrangements for registration and search, there were sufficient guarantees against the registration business of the country being impeded through its adoption concurrently with bringing up different portions of the local Registers. But we pay great deference to an opinion deliberately expressed by those who have the responsibility and charge of so important an establishment as the General Register House, and who have so much more intimate an acquaintance with its working details than we possess. We have therefore come to the conclusion, that it may be expedient to defer the actual introduction of the Search Sheet until the transfer of all the District Registers to Edinburgh has been completed. Power, however, should, we think, be given, in any Act of Parliament that may now be passed, to the Lord Clerk Register and the Lord Advocate to apply to the Court of Session for an Act of Sederunt fixing the time or times when the Search Sheet should be introduced as a part of the system of registration. On such an Act of Sederunt being passed, the system might be adopted gradually in successive counties, in the same way as proposed by us in the Report, in the case of bringing up the District Registers. The delay now proposed would have this advantage, that it would afford opportunity for an experimental volume of Search Sheets being opened, and carried on for a year or two in connection with the Register of some one county, at the public expense, in order to test the scheme, and pave the way, if successful, for its general adoption.

There are none of the apprehended difficulties stated to us which, in our opinion, may not be easily overcome. Some of them might, we think, be removed, and at the same time facilities afforded for

duplicates and certified copies of Search Sheets being furnished, if the title of each Search Sheet and the description of the lands were printed within the Register House, and the principal sheets were then bound up in volumes. Other improvements will no doubt occur, when the measure comes to be dealt with practically. Our confidence in its practicability, and our opinion as to the immense benefit which it will confer, remain unchanged.

We avail ourselves of the opportunity which this supplementary statement affords, of pointing out the close resemblance which a portion of the provisions of the English Act passed in last session of Parliament 'To facilitate the Proof of Title to, and the Conveyance of, Real Estates,' bears to our proposed 'Search Sheet.' By this important Act, the policy of extending to the whole of England the system of registering all titles to land, has for the first time received the approval of the Legislature. As a part of the measure, it is provided that when a proprietor is desirous that his title should be registered, there shall, after certain preliminary procedure, be entered in a book (No. 1), called 'The Register of Estates,' a description of the land; in a book (No. 2), called 'The Record of Title,' a record of the rights held in such land, with the names of the parties holding the same; and in a book (No. 3), called 'The Registry of Incumbrances,' an account of all charges and incumbrances affecting the same land. The entry in the first of these books is to be made in a folio, distinguished by 'a particular number or numbers;' and the same number or numbers are to be used, to distinguish the folio containing entries affecting the same land in each of the other books. Every subsequent transfer of this land is to be entered in 'The Record of Title,' and every charge or incumbrance in 'The Registry of Incumbrances.' By section 68, it is provided that 'The Registrar shall, upon request, deliver to every person who is named or described in the Record of Title, as the owner of any estate or interest in lands upon the Registry, a certificate (called a land certificate), under the seal of the office, and signed by the registrar, which certificate shall contain, first, a copy of the *description* of the same *lands*, as appearing in the registry of estates, with all the *entries relating thereto;* and secondly, a copy of the entries relating to the same lands appearing in the *Record of Title*; and thirdly, a copy of the entries in the *Registry of Incumbrances* of the mortgages, charges, claims, and liens on or affecting the estate and interest of such owner; and such certificate shall certify whether such lands are registered with or without an indefeasible title, and shall be distinguished by the *number* under which the lands are registered in "The Register of Estates," and shall contain all such other particulars as are material or useful for the purpose of manifesting the exact nature of such owner's estate and interest.' By two subsequent sections (118 and 119), provision is made for supplying a new land certificate, when the old one has been lost or has become unusable. 25 and 26 Vict., c. 53.

The land certificate to be issued is thus to contain—(1) the *description* of the lands, with all the entries relating thereto; (2) all *transmissions* of the lands as appearing from entries in the Record of Title; and (3) all *incumbrances* affecting the lands as appearing in the registry of mortgages; and all future conveyances or mortgages of such lands are to be exhibited to the registrar, and to be certified by him on the certificate of title as having been recorded. The land certificate thus provided corresponds in its essentials with the proposed 'Search Sheet.'

The chief difference between these provisions of the statute and the plan we have recommended, seems to be, that while we provide (1) for the principal Search Sheet being retained in the Search Sheet Ledger in the Register House, so as to form a record which may be easily referred to, by means of the Search Sheet number, and (2) for a certified duplicate of every Search Sheet being given to the owner, the English plan gives the principal certificate of title to the owner; and, in its absence, leaves its contents to be gathered by a search in the Registers, conducted in three separate Books of Record, connected with the certificate of title by a distinguishing number. We think that our plan, while it secures (with one exception, which has no application to Scottish practice) all the benefits conferred by the English Act, has decided advantages in respect of furnishing a Register of easy reference, in which every change in the title and every incumbrance may be found; while the issue of an official duplicate intended to be put up along with the owners' titles, will afford, when brought down to date, authentic evidence of the same facts, even without a search.

CHARLES MORTON.
ANDW. BANNATYNE.

February 1863.

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(1.) Entry in Minute Book of General Register of Sasines.

6th December 1830. Between 12 and 1.

SA. JOHN AINSLIE, eldest son of the late Col. John Ainslie of Teviotgrove, of certain parts of the lands of MAXPOFFLE or MAXPOPLE, and others; upon disposition of William Scott of Racburn. Dated 4th current, and presented by Wm. Muir, W., E.

(Signed) William Muir.

(Signed) Ar. Wishart, *Dep.*

Entry of the same Sasine in the Printed Abridgment Book for County of Roxburgh.

(Entry No. 2316) Dec. 6. 1830.

JOHN AINSLIE, son of Col. John Ainslie of Teviotgrove, *Seised*, Dec. 4. 1830,—in the 5 Merk land of MAXPOFFLE or MAXPOPLE, and Teinds, with the Farm and lands of Westquarter, (under exceptions), par. St. Boswalls;—1⅛ part of 10 Riggs or Butts in the Crofts on the south side of Bowden, and other 10 Riggs or Butts in the Crofts on the north side of the said Town, a quarter of an husband land in Bowden, 2 Croft Riggs of Bowden in the south east Croft of Bowden, 2 Croft Riggs in the south Croft of Bowden, a Piece of ground or Yard in the south Crofts of Bowden, 4 Riggs or Buts of land in the Crofts on the south side of Bowden, the Nether Mill of Bowden, Kiln and Houses and Mill lands thereto belonging, par. Bowden;—and a Piece of ground on the north side of the new Road from St Boswell's Green to Selkirk consisting of 4⅛ Acres, par. Lessudden;—on Disp. by William Scott of Raeburn, Nov. 16. 1830. G. R. 1618. 58.

Entry in Minute Book of Particular Register of Sasines—Roxburgh.

5th August 1830. Between 8 and 9 afternoon.

SASINE dated the 2d July 1830, in favour of THOMAS SMITH, Builder in Darnick, of certain Onstead of Houses called WALLBRAEHEAD HOUSES, and of certain parts and portions of 5 Acres of land of BROADMEADOW of DARNICK, and lands in the Weirhill of Melrose, in the parish of Melrose, proceeding upon the following writings, viz., first, Disposition and Settlement dated the 26th May 1812, and recorded in the Sheriff-Court Books of Roxburghshire, the 5th December 1815, executed by the deceased John Smith, father of the said Thomas Smith; second, Feu Disposition dated 14th September 1816, made and granted by Miss Sophia Mercer of Broomhill, in favour of the said Thomas Smith; third, Disposition dated the 27th May 1817, made and granted by Robert Wilson, Accountant in Edinburgh, Trustee of William Riddell, Esq., of Camieston, Writer to the Signet, and his Creditors, in favour of the said Thomas Smith; fourth, Disposition dated 10th December 1826, granted by John Hicton, Builder in Edinburgh, in favour of the said Thomas Smith; and fifth, a Disposition dated the 6th of April 1830, granted by John Wilson, residing at Rallees, in favour of the said Thomas Smith, presented by William Smith, Writer in Kelso.

(Signed) Will. Smith.
(„) John Smith.

Entry of the same Sasine in the Printed Abridgment Book.

(Entry No. 2228) Aug. 5. 1830.

THOMAS SMITH, Builder, Darnick, *Seised*, Jul. 2. 1830,—in an Onstead of Houses called WALLBRAEHEAD HOUSES with the Yard adjacent and at the east end thereof, a Rig of land in the WEIRHILL of MELROSE parts of 5 Acres of land of Broadmeadows of Darnick commonly called Mucklebroadmeadow and James's Park, with the pasture ground around the same, and Teinds, par. Melrose;—part of lands in Darnick on the south side of the North Turnpike Road from Melrose to Edinburgh; and a Ridge of land in the Weirhill of Melrose, a Piece of land or Rig there measuring 1 Rood and 30⅛ poles, and 2 Acres of land there, and Teinds; a Piece of ground in the Village of Darnick, and a Piece of enclosed ground called Smiddylees;—on Disp. and Settlement by John Smith, Portioner, Darnick, May 26. 1812;—on Feu Disp. by Sophia Mercer of Broomhill, Sept. 14. 1816;—on Disp. by the Trustee of William Riddell of Camieston, W.S., and his Creditors, May 27. 1817;—on Disp. by John Heiton, Builder, Edinburgh, Dec. 19. 1826,—and Disp. by John Wilson, residing at Raelees, Apr. 6. 1830. P. R. 96. 14.

Entries in the Index of Persons Applicable to the Foregoing Abridgments.*

1st.—Applicable to No. 2316.

Ainslie, John,	2316
Scott, William,	2316

2d.—Applicable to No. 2228.

Heiton, John,	2228
Mercer, Sophia,	2228
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———, Thomas,	2228
Wilson, John,	2228

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———, Lands and Tenements, etc.,	2316
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———, North Croft of,	2316
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———, Tenements, etc.,	2228
James's Park,	2228
Melrose,	
———, Weirhill of,	2228
Smiddylees,	2228
Wellbrachead Houses,	2228

* There are no Indexes either of Persons or Places having reference to the Minute Books.

(2.) Entry in the Minute Book of Particular Register of Sasines for Edinburgh.

L. 2031. 148. Edinr.

8th November 1855. Between 2 and 3.

SASINE. The Trustees of the late JAMES BROWN, Paper Maker at Eskmills, near Pennycuick, of a Piece of ground in the parish of PENICUIK, part of the lands of WELLHEAD, in said parish, with the whole Mills and Machinery belonging thereto, and other Houses and Buildings erected on said two Pieces of ground, part of the Farm of Eastfield of Penicuik, Piece of ground lying between the Road to Eastfield and the Water of Esk, parts of the Waulk Mill lands of Pennicuik, and others, under reservations;—on Charter of Adjudication in Implement by Sir George Clerk of Penicuik, Baronet. Presented by Thomas White, W., E.

(Signed) Ja. F. Edward.

(Signed) A. Pringle.

Entry of the same Sasine in the Printed Abridgment Book of the Particular Register of Sasines, Edinburgh.

Sixth Series.

(Entry No. 8570) Nov. 8. 1855.

The Trustees of JAMES BROWN, Papermaker, Eskmills near Pennycuick, *Seised*,—in the lands and others commonly called ESKMILLS of PENNYCUICK, viz., 4 Acres 3 roods and 4 falls of ground with the 2 Cotton Mills and several other Houses and Buildings thereon, on the south side of the Road from the Old Mill Bridge to Penicuik, and 38 Acres and 36 falls of ground part of the lands of Wellhead, par. Penicuik; 36 Falls and 20 square ells of the Farm of Eastfield of Pennicuik with the Houses thereon near Eskmills and on the north side of the Road to Eastfield, and 10 Falls of ground between said Road and the Water of Esk, par. . . . . ;—and 1 Acre or 1 Acre 1 rood 1 pole and 23 square yards of the Waulkmill lands of Penicuik, par. Lasswade;—on Ch. Adjud. by Sir George Clerk of Penicuik, Aug. 31. 1855, proceeding on Decr. Adjud. against Ann Elizabeth Tytler Brown residing at Romford, Essex, and Emily Jane Brown residing at Upper Barnsbury Street, Islington, London, or elsewhere furth of Scotland, grandchildren and heirs portioners of the said James Brown, Feb. 13. 1855,—in Impl. of Disp. and Settl. by the said James Brown, Apr. 27. 1847, and Codicil thereto, Apr. 16. 1850. P. R. 2031. 148.

Entries in Index of Persons applicable to the above.

Brown, Ann Elizabeth Tytler, . . .	8570
———, Emily Jane, ...	8570
———, James, ...	8570
Clerk, Sir George, ...	8570

Note.—No Index of Places applicable to Sixth Series.

(3.) Entry in the Minute Book of General Register of Sasines.

Lib. 2754. 37. Dumbn.

14th November 1855. Between 10 and 11.

BOND by ALEXANDER BROWN ARMOUR of Meiklehill, for an Annuity of One Hundred and fifty pounds to Isabella Brown, his mother, during all the days of her life, reducible to Thirty pounds in the event of her entering into a second Marriage, and Disposition in security by him to her of his lands of MEIKLEHILL, Rosebank, and Boog or Oxgang Boog, and others, all lying within the territory of the burgh of KIRKINTILLOCH; under declaration. Dated 13th current, and presented by Charles F. Chapman, W., E.

(Signed) Chas. F. Chapman.

(Signed) Wm. Fraser.

Entry of the same Sasine in the Printed Abridgment Book for the County of Dumbarton.

Sixth Series.

(No. 1425) Nov. 14. 1855.

ISABELLA BROWN, relict of Robert Armour of Meiklehill, Merchant, Glasgow, *gets Bond and Disp.* for a restrictable liferent annuity of £150, by Alexander Brown Armour of Meiklehill and Rosebank, Merchant, Glasgow, Nov. 13. 1855, —over the lands of MEIKLEHILL described as the half of a Newland or Muir Mailling, on the east side of the Water of Kirkintilloch, part of a half Muir Mailling on Meiklehill, with the half of a cut of Moss of said Muir lands, part of lands in Meiklebroomhill, part of a half Newland and Muir Mailling in Eastside Muir of Kirkintilloch called Middlemuir, Youngsoles and Meiklehill with the Moss thereto belonging, 12 Acres of land called East End of Meikle Broomhill, part of the Moss in the Eastside Muir of Kirkintilloch, 3 Couches of Moss in south side Muir thereof, lands called Blackdyke, lands in Stubblebrownhill, part of two Newland or Muir Maillings in the Eastside Muir of Kirkintilloch known by the name of Rosebank consisting of 24 Acres with the Houses and Buildings thereon, and the lands of Boog called the Oxgang Boog consisting of 7 Acres, being part of the Longmuir or Oxgang Mailling, all within the territory of the Burgh of Kirkintilloch, par. Wester Lenzie; —under exception. G. R. 2754. 37.

Entries in the Index of Persons applicable to the above.

Armour, Alexander Brown, . . .	1425
———, Robert, ...	1425
Brown, Isabella, ...	1425

II.—TABLE SHOWING THE AVERAGE NUMBER OF WRITS RECORDED AND FEES RECEIVED IN EACH OF THE SIXTEEN REGISTERS OF SASINES AFTER SPECIFIED, for the Five Years previous to 1845, for 1855, and for Three Years previous to 1860.—(*Report, page* 13.)

	DISTRICTS.	Average Number in 5 Years previous to 1845.	Average Total Fees for 5 Years previous to 1845.	Average Fees in 5 Years previous to 1845, per Writ.	Average Number in Year 1855.	Total Fees.	Average Fees per Writ.	Average Number in 3 Years previous to 1860.	Average Total Fees for 3 Years previous to 1860.	Average Fees per Writ.	REMARKS.
			£ s. d.			£ s. d.			£ s. d.		
1	Aberdeen	258	413 – –	32/1	406	611 – –	30/1	602	863 – –	28/8	
2	Ayr	402	530 – –	26/4	629	708 – –	22/6	877	980 – –	22/4	
3	Argyle, Dumbarton, etc.	206	290 – –	28/1	437	591 – –	27/	620	831 – –	26/10	
4	Banff	13	18 – –	27/8	19	18 – –	19/11	37	47 – –	25/5	
5	Berwick and Lauderdale	75	98 – –	26/1	152	168 – –	22/2	125	141 – –	22/7	
6	Dumfries and Kirkcudbright	175	225 – –	25/8	209	232 – –	22/3	237	272 – –	23/	
7	Fife	293	369 – –	25/2	457	466 – –	20/5	487	568 – –	23/4	
8	Forfar	353	524 – –	29/8	483	658 – –	27/3	822	1193 – –	29/	
9	Lanarkshire	290	381 – –	26/3	398	515 – –	26/	541	680 – –	25/1	
10	Orkney and Zetland	51	69 – –	27/1	69	80 – –	23/2	104	127 – –	24/5	
11	Renfrewshire and Barony of Glasgow	1334	2664 – –	39/11	2344	4194 – –	36/	2741	5053 – –	36/10	
12	Roxburgh, Selkirk, and Peebles	164	242 – –	29/5	306	412 – –	26/11	365	444 – –	24/4	
13	Stirling, Clackmannan, etc.	321	385 – –	23/11	294	342 – –	23/3	426	514 – –	24/2	
14	Wigtonshire	32	43 – –	26/10	27	26 – –	19/	75	84 – –	22/4	
	The Three Lothians } Edinburgh	1223	2485 – –	40/7	1823	2962 – –	32/6	2477	9504 – –	33/2	
	General Register } Edinburgh	1652	3357 – –	40/7	2564	4775 – –	37/3	3244			
	ABSTRACT.										
1	District Registers, from No. 1 to 14 inclusive	3967	6251 – –	31/6	6230	9021 – –	29/	8059	11,797 – –	26/9	
2	Edinburgh Registers	2875	5842 – –	40/7	4387	7737 – –	35/3	5721	9504 – –	33/2	

Note.—(1.) The foregoing Statement has been made up from the following sources:—(1), From an elaborate Statement compiled by Mr Thomas Hill, one of the Keepers of the Register of Sasines at Glasgow, showing the average annual number of writs recorded and fees received for the five years ending 1845, in the districts before mentioned. (2), From a Parliamentary Return containing similar information for the year 1855. And (3) from the answers returned by the Keepers of District Registers to the Schedule issued under the present inquiry, as to the average of the years 1858, 1859, and 1860.

(2.) The columns showing the average fees per writ for each of the three periods mentioned in this Statement, have been added for the purpose of showing that while the aggregate fees of each District Keeper have been increasing, the fees payable on each writ have been diminishing. This can only be attributed to the shortening of the writs effected by recent legislation. The writs in the District Registers seem to be uniformly shorter than those in the General Register.

III.—TABULAR ANALYSIS OF INFORMATION RECEIVED FROM THE KEEPERS OF THE PARTICULAR REGISTERS OF SASINES, REVERSIONS, ETC., IN SCOTLAND, 1861.—(*Report, p.* 14.)

1. County or District.	2. Average Number of Writs Recorded in 1858–59–60.	3. Proportion sent by Post.	4. Whether difficulty felt from reference to a prior recorded Writ.	5. Average Fees of Registration for the 3 Years.	6. Average Expenses of Registrar in the 3 Years.	7. Average Number of Searches in the 3 Years.	8. Average Fees drawn for Searches in the 3 Years.	9. Period within which a Volume is usually completed.	10. Number of Volumes.
1. Aberdeen and Kincardine,	602	29	None where Writs referred to are previously recorded.	£ s. d. 862 16 4	£ s. d. 86 8 10	36	£ s. d. 19 2 1	Between 6 weeks and 2 months.	305
2. Argyle, Dumbarton, Bute, Arran, and Tarbert,	620	546	Yes.	831 10 0	152 14 3 (No Rent payable.)	111	38 1 10	51 days.	192
3. Ayrshire, . . .	877	Nearly $\frac{4}{5}$ths.	General reference very seldom made.	980 0 0	About 160 0 0	19	7 16 8	6½ weeks.	427
4. Banff, . . .	37	Cannot answer.	No.	46 16 9	Nil.	5	2 7 2	Nearly 3 years.	24. Appointed 22d May 1861.
5. Berwickshire and Lauderdale,	125	A large proportion, but no data to give relative numbers.	None has occurred.	141 7 8	20 0 0	6	1 12 8	1 year.	...
6. Caithness, . . .	44	6	None.	56 10 2	37 0 0	1	0 15 10	3 years.	28
7. Dumfries, etc., . .	237	75	None.	272 0 4	82 15 0	21	4 2 10	5 months.	171. Appointed 15th April 1858, and information from date.
8. Elgin, etc., . . .	Cannot say, (assumed) 30	Cannot say.	No such Writ presented.	Cannot say, (assumed) 37 10 0	Cannot say.	Cannot say.	Cannot say.	Cannot say. Last one, 1 year.	38. Appointed 7th September 1860.
9. Fife, ...	487	390	None, if date of recording deed referred to is given.	568 2 4	118 11 5	12 or thereby.	5 1 6	Between 3 and 4 months.	331
10. Forfar, . . .	822	230	None	1193 12 8	226 3 2		2 10 0	49 days.	407

11. Inverness,	From 12th Sept. 1860 to 8th Aug. 1861, 121	...	...	Cannot furnish account (assumed).	Rent, L.5; Taxes, 6s. to 10s; Cost of Vol., L.5; Copying, 6d. per leaf; Coal for 6 months.	Cannot answer.	Cannot answer.	18 months.	63
12. Kinross,	52	12	None as yet.	64 3 10	No account kept, so cannot say.	13	3 5 0	Say 2½ years.	41
13. Lanark,	541	372	Yes.	680 7 4	213 0 0	34	16 3 0 and a few shillings for Searches made by parties themselves.	7 to 8 weeks.	236
14. Orkney and Shetland,	104	One half.	Not as yet, but difficulty anticipated.	127 7 6	8 0 0	3	1 10 0	2½ years.	51
15. Perth, etc.,	378	Cannot answer.	None, except in one case where the parish was not mentioned.	532 0 4	Supposed, L.55 or L.60 may be applicable.	25	13 6 8	2½ months.	302
16. Roxburgh, etc.,	365	293	No. No deeds with such reference.	444 13 4	78 0 0	11	3 0 4	2 months 23 days.	190
17. Renfrewshire,	2741	563	Yes.	5052 18 6	1225 4 6	433	102 14 0	2 to 3 weeks.	1616
18. Stirling, etc.,	426	On an average about a half.	No.	514 15 2	106 0 0	47	11 1 10	About 3 months.	296
19. Wigtownshire,	75	More than a half, but no record kept.	No.	83 16 2	25 0 0 or thereby.	4	1 6 8	2 years.	30
	8684			12,600 8 5					
Edinburgh*— General,	3244	985	No.	9504 1 0	4266 8 8	1728 exclusive of periodical Searches by seven Banks.	240 11 0	From 10 days to 4½ weeks. (Each Vol. of 198 leaves.)	3158
Particular,	2477								2292
	5721								
	8684								
	14,405			22,104 9 5					

* The figures in all the columns applicable to Edinburgh, except Nos. 2 and 10, embrace both Registers.

NOTE.—All the Keepers return negative answers to the questions, (1) Whether any Writs sent by post lost or delayed; and (2) What payments made to, and received from Exchequer; except Mr Brodie, who replies, that the entire Charges of the establishment in the General Register House are paid by Exchequer, to whom the entire fees are accounted for by him.

IV.—DOCUMENTS IN REGARD TO INDEX OF PLACES.—(*Report, pp.* 19 *and* 49.)

1. Excerpt from Communication made by Mr G. B. Robertson, Deputy-Keeper of Records to the Committee of the Faculty of Advocates in 1856.

Having thus mentioned, for the information of the committee, all that has occurred in reference to the several particulars stated in the outset, wherein, at this time, the memorandum of 1847 seemed to require alteration, I am now desirous, in compliance with what I believe to be the wishes of the committee, of adding some further observations in reference to the mode of searching, and more particularly to the Public Indices of Places and of Persons, as the means by which that is accomplished.

With regard to the Indices of *Places*, the construction of these, as has been mentioned, has, in the meantime at least, been discontinued, and none such are now available subsequent to the year 1830, either to the public or to the official searcher. The reasons for the suspension of this portion of the scheme of indexing were, *first*, That it was found, some years ago, that the construction of *two* sets of Indices to the printed abridgments had the effect of materially delaying the progress of that work, the early completion of which, to as late a period as possible, seemed to be an object of very urgent importance. *Secondly*, on consideration as to which of the two sets of indices could most easily be dispensed with (at least as a temporary measure), the general opinion of all conversant with the subject was unhesitatingly expressed in favour of the Indices of Persons, and against the Indices of *Places*,—the objections stated to which last seemed to indicate, that for nearly all practical purposes of searching they were exceedingly cumbrous and unsatisfactory, always uncertain, and, in very many instances, utterly and entirely useless. At first sight such an opinion may be thought somewhat extraordinary, considering that the registers in question have exclusive reference to land, and that the purpose for which they are searched is the discovery of the titles to, and the encumbrances upon, particular estates, the names of which, it may be imagined, being entered in accurate alphabetical indices, would afford, with greater readiness and certainty than any other method, the means of ascertaining the contents of the registers as regarded such estates. Further consideration, however, will, it is thought, lead to a very different conclusion; and, to enable the committee to judge of this matter, the following suggestions as to the practical difficulties experienced in dealing with such Indices may probably be useful. If it were the case that each separate property which enters the Registers of Sasines had attached to it a distinctive appellation, by which it could be unmistakeably recognised from every other heritable subject, and under which alone it could be dealt with, or conveyed in whole or in part, little difficulty would be found in the construction of such an index of the names of places as might safely be relied on. Such, however, is very far from being the case. Descriptions of heritable subjects, as they occur in titles (whether of landed estates or of property in towns), are very generally so vague and indefinite, as to render it no easy matter for an index-maker to determine and fix upon the several heads under which properties so described should be entered in an Index of Places. So vague and indefinite, indeed, are many descriptions, that it is not too much to affirm that, in all probability, no two persons employed in the construction of such an Index, would be found to concur regarding the heads under which subjects so described should be referred to, and hence such indices are necessarily found to be, at different periods, extremely *in*consistent in their mode of reference to such properties. There seems, besides, to be no possibility of laying down rules for the guidance of index-makers in these circumstances, which would insure that perfect uniformity and consistency in the mode of reference which is so necessary and desirable; and equally perplexing would it be to give such explanations of the index as would tend to obviate the difficulties which a searcher (dealing with an Index of Places) must generally experience, in determining, from the description before him, the several heads of the index to which his attention should be directed. Again, many estates (both of large, and of comparatively very insignificant extent) are frequently described in their titles by such an enumeration of the names of different farms, acres, crofts, riggs, and sub-divisions of various kinds, as to render not only the construction of the Index of Places a work of extreme labour, but also to impose upon the searcher of such an Index the extremely irksome and exhausting duty of examining the Index, with reference to such lands, under the head of *each* name in the description separately, a duty which can only be undertaken at a great and unnecessary sacrifice of time, and with much and very manifest risk of error, from the omission of one or more of the names. Further, it constantly happens that *portions of estates*, but more particularly of subjects in towns, are dealt with under names which do not appear in the titles to these properties, and without any distinct reference being made to the cumulo subjects, of which they formed a part, and, consequently, a search in such cases, conducted against the cumulo subjects by *their* names, must almost, as a matter of course, fail in disclosing conveyances of these portions or the incumbrances created by the proprietors upon them. Additional difficulties, too, present themselves, as the consequence of the variations which frequently occur in titles, in the spelling of the names of places (*e.g.*, 'Auldbigging,' 'Oldbigging;' 'Cruicks,' 'Crooks;' 'Fantassie,' 'Phantassie,' etc.), in which cases the alphabetical arrangement of the index obviously tends to mislead the searcher, instead of to aid or to assist him. The above are but some only of the objections which may be stated to the Indices of Places; and others might be added but for the length of detail which would be necessary. It may be admitted, however, that the Indices of Places are occasionally useful in affording a ready method by which particular writs may be discovered upon the Register; but, at the same time, such an amount of uncertainty always attends their use, that, even in the case supposed, when they fail in leading to the writs sought for, the result of the search cannot be accepted as conclusive against the existence, nevertheless, of such writs in the Record. These objections, it may be added, are not by any means merely conjectural, they are the result of the experience already had of the Indices of Places, in so far as these have been constructed; and, in further proof of the comparative inutility of these Indices, it may be stated, that for the period during which they are available, the instances in which they have been made use of for the purpose of searching have been extremely rare and exceptional.

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2. Queries addressed to Searchers of Records, and the Answers thereto.

Query 12. Are you of opinion, from your experience in making searches, that a satisfactory and trustworthy search can be made, by consulting only an Index of Names of Persons to whom a property searched against may have belonged? Can parties transacting, rely upon the accuracy of such a search? If not, be good enough to state why.

Mr Downie.—All I can say is, that, since the Searching Department fell into working order, although our searches have, at least to a considerable extent, been made by the aid of Indices of Names, errors have been extremely, nay, almost miraculously rare. Care and attention on the part of the searcher go a great way; but supposing that, in making a particular search, he has a more than usually long list of names to retain in his mind, and a corresponding number of references to consult, he will have some difficulty in completing his task, even to his own satisfaction, without a lurking suspicion that he has gone wrong somewhere, which will occasionally turn out to be the case, notwithstanding every precaution to the contrary.

Mr Stuart.—If the searcher of the Records has full instructions as to the scope of the search, I am of opinion that he may make a reliable search by consulting only an Index of Names of the Persons who may have dealt with the property.

Mr Shiell.—I think that with due care and attention on the part of the searcher, a satisfactory and trustworthy search can be made, by consulting the Index of the Names of Persons to whom a property searched against may have belonged, and that parties may rely upon the accuracy of such a search. This answer of course implies, however, that the searcher is furnished with the names of *all* the parties who have been connected with the property during the period for which the search is wished. This information the agents do not always furnish, and consequently omissions, for which the searchers cannot be held responsible, are sometimes the result.

Mr Anderson.—If the names of the persons to whom a property has belonged, and the periods during which it belonged to such persons respectively, be correctly furnished, I am of opinion that a satisfactory search can be made by consulting only the Index of Persons; and that parties transacting may rely upon the accuracy of such a search. Parties transacting, by comparing the names of persons and periods given in the search of the Register of Adjudications (which always should be appended to searches in the Register of

Sasines), with the titles laid before them, can ascertain if the names of the persons, and the periods, have been correctly given.

Mr Douglas.—Two conditions regulate my answer to this question. (1.) The agent instructing a search to be made must furnish the searcher with a correct list of the names of the proprietors to whom the property belonged, during the period of search in his instructions as to the personal Registers; and (2.) the accuracy of the Index. If both these conditions be fulfilled, I have no hesitation in stating it to be my opinion, that a satisfactory and trustworthy search can be made, and that parties transacting can rely on the accuracy of the search.

Query 18. If a complete Index of Places or Properties were prepared, would a search in that Index, either alone or in combination with a search in the Index of Names of Persons, be more satisfactory and trustworthy than a search as now made? and would such a search be, in your opinion, a search upon which parties transacting could rely.

Mr Downie.—If searchers were compelled to do their work by means of Indices of Places as well as Indices of Names, or by Indices of Places alone, I am afraid the business would soon come to a stand still, neither would the searches be so trustworthy as those now made, because it must be obvious that the more references a searcher has to consult, the greater risk there is of some of them being overlooked.

Mr Stuart.—I do not think it would be possible so to frame an Index of Places as to make it safe to search by it without an Index of Names, and I do not think that a search made by the conjoined use of both Indices would be more reliable than one made by referring to the Index of Persons, if the searcher has full information.

Mr Shiell.—I do not think a search made by an Index of Places, especially in large towns, would be so satisfactory as one made by an Index of Persons. Although there is an Index of Places down to 1830, it is rarely consulted.

Mr Anderson.—I do not think an Index of Places would be worth the trouble and expense of preparing or continuing such Index after 1830, and with the changes that take place in the names of places, I do not think that a search made by an Index of Places only could be relied on. To make a search with an Index of Places would, in most instances, be attended with ten times the trouble that attends a search by the Index of Persons, and would not be so satisfactory if the names of persons are correctly furnished. I refer to answer 13 as to the use I have made of the Index of Places, and shall only add that the present searchers could not overtake the business if they made their searches by the names of places.

Mr Douglas.—I have already stated it to be my opinion, that a search with the aid of the Index of Persons alone, would be a perfectly satisfactory search (see answer to question twelfth). This being the conviction of the searcher, the Index of Places would be only resorted to in extreme cases, provided such Index was framed on a principle insuring not only accuracy but facility of reference. Should it, however, be deemed expedient, in order to fortify the accuracy of a search, or be a check on it, to frame an Index of the Names of Places, I venture to make the following observations and suggestions:

The Index I would propose as the best, should be one of the Names of Places, in combination with those of the Names of Persons. The name of every property in the country—street in towns, with number of plan, if any, or measurment of areas, to be indexed, thus, the names in the following two examples of Minutes would be noticed as afterwards in the Index suggested:

Country Property.

(*Minute.*)

Disp. John Campbell, late of Cruixfield, to Andrew Alexander, of Cruixfield—of the Barony of Cruixfield, comprehending the Farms of Oxdale, Covenford, Ramsaygate.

(*Index.*)

C. Cruixfield.—Andrew Alexander from John Campbell—6050 (number of printed abridgment).
„ Covenford.—Andrew Alexander from John Campbell—6050.
O. Oxdale.—Andrew Alexander from John Campbell—6050.
R. Ramsgate.—Andrew Alexander from John Campbell—6050.

Urban or Town Property.

(*Minute.*)

Disp. Andrew Munro, Spirit Dealer, Edinburgh, to John Muirhead, House Factor, Edinburgh, of an Area of ground containing 576 square yards 3 square feet, No. 6 on a plan, bounded on the north by George Street of Edinburgh.

(*Index for Edinburgh.*)

G. George Street, No. 6.—Andrew Munro from John Muirhead—8059.

The preceding examples will illustrate the mode of indexing I have in view; it is, however, to be remembered that these examples represent the simplest class of Deeds, so far as description is concerned, and that where large estates are conveyed, containing many subdivisions and names of parcels of property, from the necessity of noticing every name, in the way I have shown in the Index, such an Index will not only be tedious in its compilation, but voluminous and expensive. I am, however, of opinion that there can be no better mode devised, to frame an Index to *Places*, so as to combine safety with facility of reference to the searcher, and, if deemed expedient, to act as a check on the present mode of searching by the Index of Persons alone.

Query 19. Do you think that any practical difficulty would arise in making up a complete Index of Places or Properties?

Mr Downie.—I think it would be impossible now to make up such an Index, and I have earnestly and respectfully to suggest to the Commissioners to apply to the Officers of the Irish Registry Office, Dublin, who will, no doubt, readily explain their reasons for discontinuing their Indices of Places.

Mr Stuart.—I do not think that any such Index could be framed which would not be liable to many practical objections.

Mr Shiell.—I have no doubt great difficulty would be experienced in making a reliable Index of Places, and it would *not* be worth the expense.

Mr Anderson.—From the very great number of names of places in some estates, and the very great subdivision of places bearing the same name in or near towns, I think there would be great difficulty in making an Index of Places or Properties which would be useful.

Mr Douglas.—I beg to refer to the concluding observations in the answer to the last question.

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3. Documents relative to Indexes of Irish Registers.

(1.) Letter from M. O'Connell, Esq., Registrar.

Registrar of Deeds' Office,
Dublin, 2d January 1863.

Sir,—I have received your letter of the 17th ult., acquainting me that you and Mr Andrew Bannatyne of Glasgow have been for some time occupied in an inquiry as to registration in Scotland, under instructions from the Home Office—the best mode of indexing the registers having had a large share of your attention; that you had been informed that the Index of *Places* which was at one time made up in the Irish Registry had been discontinued; and requesting information whether such was the case, and what mode of indexing is now in use; and whether it is found fully to answer for purposes of search, and for all other purposes for which the Register is consulted.

In reply, I beg to inform you that an Index of Places (what we call an 'Index of Lands') has been always kept in this office, and was never at any time relinquished; it is, in fact, as essential as the Index of Names.

As to your inquiry regarding the present mode of indexing, and how far it answers, I would refer you to the enclosed papers respecting this office which were submitted to the Treasury, and were printed by order of the House of Commons last session. These papers show the defects of the present system of indexing, and contain plans for improved Indexes both of Names and Lands. The example Indexes sent with them were not printed, as I believe it was not considered necessary to incur the expense. I therefore send you copies, as the plans would not be so well understood for practical purposes without them.

This office was established in 1708, and has been regulated by a variety of statutes; it is now regulated by the Act of 2d and 3d Will. IV, cap. 87, chiefly. The system of indexing at present in use was instituted by that Act; previously the Indexes of *Names* had been made up in dictionary order of the surnames, generally in annual divisions. What is called 'sectional' arrangement—that is, by the first and second letters of each surname—was introduced by that Act. I believe it was supposed at the time, that the new mode would give facility beyond the other, but on the contrary it

has proved to be most tedious and inconvenient, and far inferior; but the newly proposed improved plan described in the printed papers gains upon it in the proportion of nearly minutes to hours in making a search. Moreover, under the present law, the Sectional Indexes must continue for periods of *ten* years, when they are to be made into dictionaries (or 'consolidated,'—a task which has proved most laborious, from the enormous numbers of entries which accumulate in that time; whereas the mode pointed out in paper No. 2 (printed), of carrying the Names Index forward in the order of dictionary as the memorials are received, would give the perfect dictionary arrangement *at once*, and so effect incalculable saving of time and labour in searching, as well as in the recasting of the entire Index. As it has been now sufficiently tested here, I can confidently say that it answers perfectly for the purposes of search beyond any other plan I know of, and I do not think anything more suitable for the purposes of this office is required or could be devised.

With respect to our Lands Indexes, these, as mentioned in the printed papers, do not admit at present of any arrangement much more convenient than the one in use; because from the irregular mode of spelling our Irish denominations, multiplied also by 'alias' spellings, they could not be brought into dictionary arrangement; for the same denomination is constantly varied in spelling in different instruments. The most we can do, is to index the names of the lands alphabetically by their first letter in baronies. The territorial divisions in Ireland are—1st, counties; 2d, baronies; 3d, parishes; 4th, townlands (or 'denominations'); the townland being the unit division. In cities and large towns the division is by parishes and streets, the street being the unit division.

There has latterly been a very general opinion, that dealings with land in Ireland would be much facilitated by eliminating every plurality of spelling (or alias) of the same denomination, and adopting the *one* spelling only for the same land, viz., that upon the Ordnance Survey Map; and so far as concerns our Lands Indexes, this would no doubt simplify and shorten the work a good deal; but I am inclined to think that whenever the proposal comes to be calmly considered, it will be found beset with difficulties nearly insuperable. However, the plan of Lands Index proposed in Mr Ray's letter (No. 4 of the printed papers) is very simple, and will answer perfectly if it be found that the Ordnance names may be adopted.

When you have looked over the documents herewith, if there be any further questions upon which you may consider that I can afford information, I shall be most happy to furnish it.—I am, sir, your obedient servant,

MORGAN O'CONNELL, *Registrar*.

Charles Morton, Esq., 11, Queen Street, Edinburgh.

House of Commons Return, No. 191 of 1862.

(2.) EXCERPT FROM MR RAY'S LETTER TO THE TREASURY ABOVE REFERRED TO.

REGISTRY OF DEEDS OFFICE,
Dublin, 29th November 1861.

SIR,—A very general opinion appears to prevail that the Registry of Deeds should be put in connection with the Ordnance Survey, or based upon it, in any future regulation of the Registry Office.

In course of much thought, devising plans and suggestions for improving the Indexes and facilitating the business details, as already brought under notice of my Lords, I have turned my attention to see how the Lands Indexes might be modified, and arrangements made to meet the above requirement. I have drawn up a plan which would, as I believe, answer the purpose in a complete and simple way. I forward a model of it herewith, marked (M.) founded upon the actual registries in the Barony of Moycarn, County Roscommon, for the 10 years 1850–59, supposed to commence at page 100 of the county book. I have selected that barony as being of small extent, at same time that it gives average entries; larger baronies would make the documents too voluminous as examples.

I assume that the fundamental principle of the registry which has stood for a century and a half will not be changed.

The plan is then subject to these conditions:

1st. That for registry purposes the name of each townland shall be the one upon the Ordnance Survey only; no 'alias' names, nor sub-denominations, to be dealt with on the registry index books.

2d. That the barony in which each townland is situate shall be inserted in the memorial.

[In strictness the parish also should be stated, since townlands are frequently repeated by name in adjoining parishes.]

I propose, then, that there shall be a book for each county, as at present; in case of large counties additional volumes, if necessary.

That each county book be subdivided into baronies, as at present. I keep the baronial division, as the one most in conformity with usage.

For cities and large towns the index to be as at present by streets, in their alphabetical order. The numbers and condition of houses are changed so frequently that I fear an arrangement of entry by number in each street could not be effected.

The entries in the baronies are carried on now by the initial letters only of the lands; they could not be brought into dictionary order, from the uncertainty of the spellings, these constantly varying in successive deeds.

I propose instead, that the Ordnance Survey names of the townlands in each barony shall be printed in exact dictionary order, upon the sheets which will form the index books, the sheets being first suitably ruled in columns, and faint cross ruled for the entries. (In the model I have omitted the Day Book page, as it is useless.)

That the number of the Ordnance sheet or sheets upon which the land will be found on the map, be printed opposite each townland, and the parish also, and probably the acreable contents.

That in printing the names of the townlands, a space of about 10 ruled lines be left between each, to receive the entries which may occur in a period of 10 years, supposing the Index to be designed for 10 years; if for a less or a greater period, the spaces should be in proportion, say at the rate of a line per year.

That the opposite pages should be left blank (the same way as in the Names Indexes which I have designed), as precaution to admit of additional entries in cases where the spaces left might not be sufficient; this would not often happen, as experience shows that the entries seldom exceed six or seven per townland in 10 years; but the provision is indispensable for the proper working of the index.

I propose that the sheets should be arranged and printed under authority of the Ordnance Survey Office, be bound into requisite books, and so delivered to the Registrar for use.

That the books being, in the first instance, speculative as to space, as all such Indexes must be, they should be of paper, to save cost of parchment; but when the series became completed the Indexes should be permanently engrossed or printed upon parchment, as many copies as might be thought necessary. . . .

A most important advantage, which I think I see in the form of Index which I propose, is, that it would answer for an Index of Titles without further trouble, or any intricacies, such as made the Act of the 13 and 14 Vict., c. 72, inoperative.

Suppose, for instance, I require to know the condition of certain property in this barony of Moycarn. Knowing the names of the townlands, or one of them, say 'Cameloon,' I look to the townland column, and I find those entries opposite that townland—

1853, ...	7	28
1853, ...	19	220
1856, ...	15	33

Following these figures through the barony, I see the same references, opposite to the following lands, viz.—

Cappayuse,
Cloonbeggann,
Clooniff,
Coolumber,
Creggan,
Curraghagower,
Derrineel,
Derrylaghan, and
Moore, N. and S.

I have then only to look to the three abstracts referred to, I find that—

1853 . 7 . 28 is a conveyance of the above lands from the Incumbered Estates Commissioners to W. K.

1853 . 19 . 220 is a charge upon the same lands for a loan by Drainage Commission to said W. K.

1856 . 15 . 33 is a mortgage of them by said W. K. to S. K.

All which can be ascertained in a few minutes.

On the other hand, if I want to know the lands, a reference to the parties Names' Index will doubtless show some deed by W. K. affecting them, and the information can then be found on the Lands' Index as above explained.

To show more clearly the facility and saving which the form of Index I propose would afford beyond the one in use, I beg to refer to the parchment document herewith; it is a transcript, page for page, of the Lands Registry Index of the Barony of Moycarn, County Roscommon, for 10 years, 1850–59 (*i.e.*, two quinquennial series, 1850–54 and 1855–59 inclusive).

I have drawn red ink lines through what appear to me to be alias and sub-denominations, and repetition entries.

This may render the document of some use to show what might be the actual advantages from eliminating alias and sub-denomination names, as weighed against such objections and difficulties as may have to be encountered in the way of making such a change.

I have also marked variances of spellings from those on the Ordnance maps, which show how indispensable it is, if the Ordnance survey is to be referred to, that the land names should be accurately spelled in the memorials; the indexes could not otherwise be kept correctly.

If outline Index maps of the townlands in each barony, such as the one I have annexed to the pattern index herewith, were placed in the county index books at commencement of each baronial division, they would be found very convenient for reference. I have not had time to draw the map with mathematical exactness, but it may serve as an example. I reduced it from the 6-inch scale to 2 inches, a size which shows the townlands very well. Maps of the larger baronies should go across two pages. If properly constructed under authority of the Ordnance, they might save the necessity for having the larger maps in this office. The plates would be only a first expense, as they would answer for subsequent indexes.

I wish to remark, that in devising the plans for the Lands' Indexes, as well as those for the Names' Indexes already submitted to my Lords, and any other improvements that occured to me, I have had in view, not to interfere with the fundamental system of the registry which appears to be so plain, safe, and effective, that I doubt if anything that could be substituted for it would be found an advantage. I have tried only to improve and simplify the operations and cut off useless work, and in this way effect a real large saving of time, labour, and money.

The business processes of this department are in the main different from the usual kind; they can hardly be well understood without long and intimate acquaintance with all the branches of the office, such as my line of duties enabled me to acquire by more than 10 years of close inspection.

I have felt it my duty respectfully to submit the accompanying plan for the consideration of the Lords Commissioners of Her Majesty's Treasury, observing that I do so with permission of Morgan O'Connell, Esq., Registrar. My sole motive is to endeavour to facilitate the public business, and thereby render a public service.—I have, etc.

(Signed) *T. M. Ray,*
Chief Clerk Registry of Deeds Office, Dublin.

To George Alexander Hamilton, Esq., etc. Treasury, London.

V.—EXAMPLES OF SEARCH SHEETS AND DUPLICATES.—(*Report, p. 29.*)

SEARCH SHEETS SUPPOSED TO BE TAKEN FROM THE COUNTY OF FORFAR REGISTER,

ASSUMING THE SYSTEM TO HAVE COME INTO OPERATION ON 1st JANUARY 1862.

(I.) *Case where a Bond and Disposition in Security is the first deed presented for registration; and where two portions of the property have been conveyed to other parties—one portion before that Bond is discharged, and another portion feued after the discharge of the Bond.*

SEARCH SHEET. FORFAR $\frac{1862}{1}$.

Full Description.—All and Whole that park called the Broompark, consisting of about 18 acres of land, be the same more or less, lying within the parish of Dundee and shire of Forfar, and bounded by the lands of Startup, sometime belonging to Alexander Waddell, on the east; the lands sometime of Mungo Brown, and the parish road leading to Braco, on the south; the lands belonging to the heirs of Allan Gibb on the west; and the high road to Arbroath on the north: which said park is part and portion of All and Whole the lands of Westercraigs, sometime belonging to William Milne, Esq., of Braco, lying bounded and described, as in the ancient titles thereof, in the said parish of Dundee and county of Forfar.

Short Description.—BROOMPARK, parish of Dundee and county of Forfar.

1. Sa. Archibald Thomson, minister of the parish of Yonflatt, on Disp. by Thomas Graham. Registered 19th August 1860.
2. Sa. Walter Currie, tanner in Brechin, on Disp. by Archibald Thomson, minister of the parish of Yonflatt, of a part of Broompark. Registered 11th July 1861.
3. Bond and Disp. in Security for L.1000 by Archibald Thomson, before designed, to Niel M'Whirter of Johnstone, near Pettycur. Registered 1st January 1862.
4. Disp. by Archibald Thomson, minister of the parish of Yonflatt, to Frances Wilson, widow of the deceased Alexander Wilson, merchant in Dundee, of a part of said lands. Registered 7th October 1862.

   (*Mem.**)—New Search Sheet *for Frances Wilson is marked*—FORFAR $\frac{1862}{4}$.

5. Ren. by Niel M'Whirter of Bond and Disp. in Security for L.1000 by Archibald Thomson, discharging lands in preceding entry. Registered 7th October 1862.
6. Assig. by Niel M'Whirter of Bond and Disp. in Security for L.1000, by Archibald Thomson to Anthony Inglis, toll-keeper at Carnoustie. Registered 8th January 1863.
7. Ren. by Anthony Inglis, toll-keeper, formerly at Carnoustie, now in Baker Street, Dundee, of Bond and Disp. in Security, for L 1000, by Archibald Thomson. Registered 5th July 1865.
8. Feu Con. between Archibald Thomson, minister of the parish of Yonflatt, and Euphemia Begg, eldest daughter of John Begg, merchant in Montrose, of a plot of ground. Registered 8th August 1865.

   (*Mem.**)—New Search Sheet *for Elizabeth Begg is marked*—FORFAR $\frac{1865}{105}$.

9. Trust Disp. Archibald Thomson, minister of the parish Yonflatt, to Alexander Thomson and others, his trustees. Registered 20th October 1865.

(II.) *Case of Derivative Title, in the Person of Frances Wilson (Disponee of part of the lands mentioned in Case First).*

SEARCH SHEET. FORFAR $\frac{1862}{4}$.

Full Description.—All and Whole that plot of ground extending to one acre three poles, imperial measure, or thereby, and bounded by the lands, sometime of Mungo Brown, and the parish road leading to Braco on the south; the lands sometime belonging to Alexander Waddell on the east; and the remaining lands belonging to the said Archibald Thomson on the north and west, being part and portion of the said Archibald Thomson's lands of Broompark, situated in the parish of Dundee and county of Forfar; which plot of ground is part of my lands of Broompark, of which lands the Search Sheet number is—

FORFAR $\frac{\text{Eighteen hundred and sixty-two}}{\text{one}}$.

Short Description.—None.

1. Disp. Archibald Thomson, minister of the parish of Yonflatt, to Frances Wilson, widow of the deceased Alexander Wilson, merchant in Dundee. Registered 7th October 1862.

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* The words in these memoranda which are printed in italics, are inserted for the purpose of explanation, and are not intended to form part of the actual Search Sheet.

2. Disp. Frances Wilson, widow of the deceased Alexander Wilson, merchant in Dundee, to each of her daughters, Margaret and Anne Wilson, of a *pro indiviso* half. Registered 9th November 1862.
3. Disp. Margaret Wilson or Jackson, wife of James Jackson, portioner in Dundee, to Charles Butler, of No. 6 Lower Thames Street, London, of her one-half *pro indiviso*. Registered 12th August 1863.
4. Disp. Anne Wilson, daughter of the late Frances Wilson, residing in Brougham Street, Dundee, to Eleanor Webster, spinster, residing in Dundee, of her one-half *pro indiviso*. Registered 20th January 1864.
5. Bond and Disp. in Security for L.150 by Eleanor Webster, spinster, residing in Dundee, to James Allan, merchant in Dundee, of her one-half *pro indiviso*. Registered 20th January 1864.

(III.) *Case of Derivative Title in Person of Euphemia Begg (Feuar of part of the lands mentioned in Case I.).*

SEARCH SHEET. FORFAR $\frac{1865}{105}$.

Full Description.—All and Whole that plot of ground situated on the west side of a street lately opened up, leading from the parish road to Braco, to the turnpike road between Dundee and Arbroath, and containing 404 square yards or thereby; on part of which a schoolhouse has been recently built, and as the same is now possessed by the committee of subscribers to the Ragged Schools in Dundee, situated in the parish of Dundee and county of Forfar; which plot of ground is part of my lands, of which the Search Sheet number is—FORFAR $\frac{\text{Eighteen hundred and sixty-two}}{\text{one}}$.

Short Description.—DUNDEE RAGGED SCHOOL.

1. Feu Con. between Archibald Thomson, minister of the parish of Yonflatt, and Euphemia Begg, eldest daughter of John Begg, merchant in Montrose. Registered 8th August 1865.
2. Bond and Disp. in Security for L.360 by Euphemia Begg, residing in Dundee, to Richard Thomson, formerly merchant in Montrose. Registered 29th August 1865.
3. Disp. Euphemia Begg, residing in Dundee, to Allan Thomson, brazier in Dundee, of a small plot of ground, part of the Dundee Ragged School ground. Registered 30th September 1865.

(*Mem.**)—New Search Sheet *for Allan Thomson is marked*—FORFAR $\frac{1865}{120}$.

(IV.) *Case of Sale of a part of the property embraced in the Feu Contract in Case No. III.*

SEARCH SHEET. FORFAR $\frac{1865}{120}$.

Full Description.—All and Whole that small plot of ground lying at the west end, and being part of the Dundee Ragged School ground, measuring one hundred square yards or thereby, now occupied as a one storey shop by Helen Anderson, druggist, and fronting the turnpike road, lying in the parish of Dundee and county of Forfar, which plot of ground is part of my lands, of which the Search Sheet number is—FORFAR $\frac{\text{Eighteen hundred and sixty-five}}{\text{one hundred and five}}$.

Short Description.—None.

1. Disp. Euphemia Begg, residing in Dundee, to Allan Thomson, brazier in Dundee. Registered 30th September 1865.
2. Bond and Disp. in Security for L.300 by Allan Thomson to James Duncan, mason in Forfar. Registered 1st August 1867.
3. Assig. by James Duncan, of said Bond and Disp. in Security for L.300 to Janet Forman, his spouse. Registered 2d May 1868.

EXAMPLE OF A DUPLICATE SEARCH SHEET AND CERTIFICATES.

DUPLICATE SEARCH SHEET. FORFAR $\frac{1865}{120}$.

Full Description.—All and Whole that small plot of ground lying at the west end, and being part of the Dundee Ragged School ground, measuring one hundred square yards or thereby, now occupied as a one storey shop by Helen Anderson, druggist, and fronting the turnpike road, lying in the parish of Dundee and county of Forfar, which plot of ground is part of my lands, of which the Search Sheet number is—FORFAR $\frac{\text{Eighteen hundred and sixty-five}}{\text{one hundred and five}}$.

Short Description.—None.

1. Disp. Euphemia Begg, residing in Dundee, to Allan Thomson, brazier in Dundee. Registered 30th September 1865.

Gen. Register House, 31 *July* 1867.—I certify that no farther entry has been made in the principal Search Sheet prior to thirty-first July eighteen hundred and sixty-seven.
C. D., *Superintendent.*

2. Bond and Disp. in Security for L.300 by Allan Thomson to James Duncan, mason, in Forfar. Registered 1st August 1867.

Gen. Register House, 1 *May* 1868.—I certify that no farther entry has been made in the principal Search Sheet prior to first May eighteen hundred and sixty-eight.
C. D., *Superintendent.*

3. Assig. by James Duncan, of said Bond and Disp. in Security for L.300 to Janet Forman, his spouse. Registered 2d May 1868.

Gen. Register House, 2*d May* 1868.—I certify that no farther entry has been made in the principal Search prior to second May eighteen hundred and sixty-eight.
C. D., *Superintendent.*

VI.—QUERIES AND ANSWERS IN REGARD TO THE PROPRIETY OF ADOPTING A 'REGISTRATION SYMBOL.'—(*Report, p.* 39.)

(1.) QUERIES.

24. Have you examined and considered a scheme for giving every writ registered a distinctive number in the Register, and in the Certificate of Registration, to be referred to in all future deeds flowing from the same party, and affecting the same property, or any part of it—and of instituting a Ledger, or Search Book, to which that distinctive number shall afford a key?

25. Are you of opinion that any such scheme would be an improvement, or the reverse, upon the system of abridging the Records, and framing Indices of Names of Parties and of Places? Be good enough to state the reasons of your preference for either system.

(2.) ANSWERS BY THE LATE MR ALEXANDER DOWNIE, OFFICIAL SEARCHER.

24. I have long had under consideration a scheme not for giving every conveyance (as might be inferred from the terms of the query), but every *property* registered a distinctive number; and, assuming that we work by means of a Day Book only at present, of having a Ledger also. The scheme, in fact, is that (with some necessary modifications to adapt it to our old system of Registration) which was first brought to notice by the English Real Property Commissioners, and is now working satisfactorily in New South Wales and New Zealand, and is certain to be extended to Ireland sooner or later.

The working of the Index is so simple as to disarm criticism.

(1.) A property is indexed when the first writ forming a step in the progress of the title, occurring after the commencement of the Index, is given in for registration. Each property has its own head or folio assigned to it in the volume of the Index in hand at the time, and with the exception of writs assigning or discharging previously existing securities, and the other writs hereafter specially provided for, all the successive writs relative to the same property are entered on the same folio. The first folio, in every case, has a number for its heading, which number is the symbol of the property; and, when the folio is filled up, this number is carried forward in the same way as the name of a debtor is carried forward from folio to folio in an ordinary Ledger.

(2.) When properties indexed under more heads than one are included in the same deed, the deed is entered under one of the heads only, in the same way and to the same effect as if it had been entered there from the beginning, and a reference or references to lead to this head are made under the other head or other heads.

(3.) When a part only of a property indexed under any head is sold or feued, in order to prevent confusion of title, the deed by which this is accomplished is entered under a new head, in the same way and to the same effect as if it had been entered there from the beginning, and a reference to lead to this head is made under the other head.

It will thus be seen, that when once a property gets on the Index, its condition, and the changes it may have undergone, will be readily ascertained during all future time, so long as Scotland has a Register Office, by merely referring to the books kept there, and to the heads from and to which the property has been transferred; every head in the Index is, in fact, so far as it goes, a search ready made, and one, too, about the accuracy of which there cannot be the shadow of a doubt.

I am aware that, for some time to come, searches, especially long ones, will have to be commenced by the abbreviates; and I may be told that it is a pity to give ourselves so much trouble about a plan which is to come into operation so gradually. But my answer is, that a great number of our searches are 'short continuations,' being for periods under a year, that these are often as troublesome as searches for a much longer period, and that I have no doubt that the Index would come to be of service before it was a month old.

(3). Answers by John D. Douglas, Esq., Non-Official Searcher of Records.

24. In replying to this question, I find it will be necessary to go into minute details of the various steps in the procedure connected with the system I beg to submit for consideration, even at the risk of being deemed tedious.

Before entering on the statement of the system, I beg to suggest,

(1.) That the General Register be discontinued.

(2.) That the Local District Registers be removed to Edinburgh.

(3.) That these Registers, when removed, be divided, so that there shall in future be a separate Register for each county, thereby continuing the arrangements of the Registers adopted by the compilers of the printed Abridgments.

(4.) That notwithstanding this division, it will not be necessary to appoint keepers for each county; but according to an estimate of the number of deeds, on an average of the last five years, a principal keeper be appointed to a district or division embracing several counties, so that there shall be an equal division of labour among these keepers. These divisions may be named respectively 'The Northern,' 'The Western,' 'The Eastern,' and 'The Southern,' or if necessary to be still further subdivided, 'The Northern,' 'The North Western,' 'The North Eastern,' 'The Southern,' 'The South Western,' The South Eastern,' etc. I would further beg to recommend that principal keepers be appointed for each of the following divisions, viz., the County of Edinburgh, the district presently superintended by Messrs Hill and Graham, Glasgow, and the County of Aberdeen—these being the most important; the remaining counties to be regulated as to the appointment of a keeper by the numerical average of deeds, as before suggested.

(5.) That schedules or forms of Minutes be framed under the superintendence of a Committee of the Legal Profession of Edinburgh, Glasgow, and Aberdeen—the Depute-Clerk Registrar, as superintendent of the offices of printed Abridgments, the present Keepers of Registers, and Mr George B. Robertson, as custodiers of the Registers.

(6.) That these forms, after being finally adjusted to meet the peculiarities of each class of deeds they are assumed to be an abstract of, be printed as an appendix to the Act to be passed.

(7.) That in future the agent giving in deeds to be registered, shall produce with each deed a Minute framed in terms of these forms.

(8.) That to preserve uniformity, either printed forms, so far as they can be printed on sheets of paper made for the purpose, with some water mark or device to distinguish them as being for Abstracts or Minutes of deeds, with the name of the county wherein the lands or subjects are situated, be issued by the keepers of these District Registers, or by an official appointed for the purpose.

(9.) That these Minutes shall be revised by the keeper, in connection with the deeds they refer to; and on being found by him to correspond to the requirements of the Act, they shall be first filed, and on such a number being given in as will form a volume, of a thickness to be agreed on, that they shall be bound and deposited with the Record they embrace, in the general repository.

(10.) That on the keeper rejecting as informal any Minute, he shall intimate the same to the agent giving in such informal Minute, and on the Minute being adjusted, in the office of the keeper, according to his directions, the Minute shall be re-copied by one of the keeper's assistants, at the expense of the agent of the rejected Minute—of course, it is understood that the informal Minute is to be retained by the keeper till adjusted.

In making these suggestions, I deem it right to state, that though at one time in favour of the tabular form of framing Minutes, on further consideration, I am of opinion that it would be found cumbrous and inconvenient.

Where, for instance, a long description of property was necessary to be minuted, so as to include all the names of the various parcels, divisions, farms, fields, etc., the description would occupy a space in the column within which it would appear of several pages, while the names of parties and the other divisions of the Minute would be contained in a line or two, so that great spaces would be left in these columns, and occasion a corresponding waste of paper. It would thus tend to increase the size of the Minute Book, without any important benefit being thereby obtained.

With these suggestions, I now beg to submit in detail my plan of Registration, on the principle of the Ledger, which I propose to term 'The Ledger of Conveyances of Heritable Rights.'

To render more clearly what I have in view, I propose to detail,

(1.) The machinery connected with the registration of feu rights granted *after the passing of the Act*, forming the basis of titles to ground previously held by superiors; and

(2.) The mode which suggests itself as best adapted to meet the position of deeds in connection with property already feued, or the title to which has been recorded *previous to the passing of the Act*.

It will be necessary to have the tables and sheets containing forms of the Presentment Book and the Ledger of Conveyances at hand, to compare with the references embodied in the following Minutes and keeper's certificate.

The books which will be required are,

1st, The Presentment Book, in which every deed presented will be first entered and numbered consecutively.

2d, The Minute Book, wherein every deed will also be numbered with the corresponding number in the Presentment Book.

3d, The Numerical Ledger of Conveyances, wherein each folio will represent a distinct property, and every transaction affecting the same property will be entered upon the same folio.

Forms of the 1st and 3d of these books are herewith sent. See Form I. and II., pp. 71 and 72.

4th, The book wherein the writ is copied *ad longum* on Record.

A Minute of a feu charter or disposition is first presented as an example:—

No. 100, supposed No. in Presentment Book and Minute. } Folio 50, supposed No. and folio of Numerical Ledger of Conveyances.

Between the hours of 10 and 11 forenoon. 1st January 1862. Feu charter or feu disposition by John Anderson, Merchant, Glasgow, to Andrew Ferguson, Soapboiler, Greenock, of a steading of ground containing 5005 square yards and 6 square feet marked No. 17 on a Plan, bounded on the north by Bath Street, and on the east by Nile Street, with houses thereon, part of the lands of . Recorded in book 3000, folio 70. (This is the Record.)

(Signature of Keeper of Register.)

It will be observed that the preceding is divided into the following clauses:—

(1.) The number of the writ in the Presentment Book and Minute Book, which will be entered in the Numerical Ledger of Conveyances of Heritable Rights, as after directed.

(2.) The folio of the Ledger.

(3.) The insertion of the hour and date of presentment.

(4.) The name of the writ or deed.

(5.) The name and designation of the granter.

(6.) The name and designation of the grantee.
(7.) The description of the subjects conveyed.
(8.) The number of the Record Book, and folio thereof.
(9.) The signature of the registrar.

This separate arrangement of the clauses of the Minute approaches to the tabular system already referred to, and thereby will enable a searcher at once to detect, the position of the description of the property, as well as the names of the parties connected therewith, while it obviates the objection formerly stated to the tabular arrangement.

It is assumed that this feu right is the *first* affecting the particular subjects therein described which has been presented for registration *after the passing of the Act*. The number of its presentment in the Presentment Book will be placed on the back of the feu right, say 100, when the registrar will turn up 'The Numerical Ledger of Conveyances' at the folio, after the last numbered or opened up, which it has been assumed to be the 50th, and enter the above, No. 100, on the left side of the folio, or in the first column, and also on the first line thereof, under 'No. of Presentment or Minute Book,' at the same time filling in the name of the conveyance, date of recording, Book of Record, names of granter and grantee and subjects, all as shown in the specimen sheet; and immediately thereafter enter the feu right in the Minute Book in the form suggested at pages 12th and 13th.

The feu right itself having been recorded, the keeper of the Register will endorse it with the following certificate:—'At Edinburgh, between the hours of 10 and 11 forenoon, the first day of January 1862 years, this deed was presented for registration, and is engrossed on the 70, 71, 72, and 73 leaves of the three thousandth volume of the Register of Sasines kept for the shire of ' (or other district as may be territorially fixed by Act of Parliament), 'the Minute of said deed having been marked and entered in the "Ledger of Conveyances of Heritable Rights" at folio 50 thereof, under the No. 100.'

Let it now be supposed that Andrew Ferguson has granted a bond for L.1000, over the property, to Joseph Sales, Accountant in Glasgow, of even date with the conveyance by John Anderson, and that it accompanies the original feu right, it will be minuted immediately after the feu right, and numbered 101 as follows:—

No. 101 from 100 or $\frac{101}{100}$. } Folio 50 of Numerical Ledger of Conveyances.
Between the hours of 10 and 11 forenoon. 1st January 1862. Bond for L.1000 sterling, and Disposition in security, by Andrew Ferguson, above designed, to Joseph Sales, Accountant in Glasgow, of the above subjects. Book 3000, folio 73. (Signature of keeper.)

It is to be noticed, that the bond in this instance having been presented simultaneously with the feu right which is the commencement of a new title, the number of the minute of the feu right is not known to the agent who prepared the bond, and cannot be inserted by him in the bond, as will be the case where it has been granted after the engrossing of the conveyance in the Record; this omission, however, will not be of any consequence, as the certificate of the keeper on the bond will contain both numbers in its conclusion, thus 'the Minute of this deed having been marked No. 101 from 100, or No. $\frac{101}{100}$, and in the Numerical Ledger of Conveyances at folio 50 thereof, No. 101.'

Should there be more than one bond presented with the original title over the same property, they will fall to be minuted and numbered '102,' '103,' '104,' and so on 'from 100,' or '$\frac{102}{100}$,' '$\frac{103}{100}$,' '$\frac{104}{100}$.' As they are required to be entered in the Register, and will be transferred to the Numerical Ledger of Conveyances under these numbers, the Minutes of these additional bonds will be similar to that of the previous; but to show the working of the system, let it be supposed that the grantees' names are respectively—of '102,' Andrew Wotherspoon; of '103,' the Trustees of John Crosbie; and of '104,' Thomas Buckmaster,—on referring to the sheets of the Presentment Bock and Numerical Ledger of Conveyances herewith sent, it will be seen what position these bonds occupy there.

Suppose, next, that the first bond is assigned, say on 16th May 1862, by Joseph Sales to Archibald Campbell.

The conveyancer, on examining the certificate of the keeper on the original bond, will find, not only the number of the bond, but that of the original title, and after narrating the date of its registration, will add 'the Minute of which bond is marked No. 101 from 100, or No. $\frac{101}{100}$, and in the Numerical Ledger of Conveyances, at folio 50 thereof, No. 101.'

On presenting the assignation for registration, the registrar will enter it in the Presentment Book, and endorse it with the number it is therein numbered, say 500; and on examining the clause in the assignation referring to the number of the bond, will be enabled at once to turn up the folio of the Numerical Ledger of Conveyances, and insert the number, viz. 500, with the number of the original bond, the date of recording, names of granter and grantees and subjects conveyed, all as shown in the Specimen Sheet.

The Minute Book will be numbered thus: 'No. $\frac{500 \text{ from } 101}{100}$, or $\left\{\frac{500}{101}\right\}$ 100,' folio 50 Numerical Ledger, and the registrar's certificate will conclude with the reference to numbers thus: 'the Minute of this deed having been marked "No. $\frac{500 \text{ from } 101}{100}$, or $\left\{\frac{500}{101}\right\}$ 100," and in the Numerical Ledger of Conveyances, folio 50 thereof, No. 500.'

The same mode of entering and numbering in the books referred to, will be adopted in regard to the registration of every subsequent assignation, of the first bond, as well as with the transferences of the other bonds, care being taken to distinguish the particular bonds assigned, by entering their numbers in the Numerical Ledger of Conveyances, in the column after the insertion in the space for 'Name of Deed' of the word assignation or translation, as the case may be.

In making up a title by trustees or heir to a deceased bond-holder, the conveyancer will require to insert the clause, at the end of the registrar's certificate, of the previous transference, or if the bond has not been assigned, of the bond itself containing the references to the number, etc., as provided to be done in the case of assignations at page , or bonds at page .

For the sake of illustrating the system, let it be supposed that Andrew Wotherspoon, the original holder of the bond No. 102, having died, his testamentary trustees proceed to make up their title to the bond by notarial instrument, and on 7th August 1862, this title is presented for registration. The number in the Presentment Book, say 3056, will be endorsed on the notarial instrument, and the registrar finding the folio of the Numerical Ledger of Conveyances, on examination of the clause containing the concluding portion of his certificate on the bond which has been inserted in the body of the notarial instrument, will turn up the folio 50, and therein enter the transference or the trustees' title. This will be found entered in the Specimen Sheet. The Minute will be numbered with the number in the Presentment Book, and made out otherwise in similar terms to those of which examples have been already given.

Suppose, next, that John Crosbie's Trustees, the holders of the bond for L.3000 numbered 103, assigns L.1000 of it to Andrew Cunningham. The conveyance will, as in the former instance, observe the regulation as to inserting the concluding clause of the registrar's certificate on the bond, containing the number of the Minute, etc.; and on its being presented, say on the 10th April 1863, for registration, and marked with the number it holds in the Presentment Book, which may be supposed to be 4555, the registrar will, on finding the folio of the Numerical Ledger of Conveyances, or folio 50, enter it therein, as done in the Specimen Sheet, 'Partial Assignation,' adding the amount assigned in the last column appropriated to Assignations and Discharges, titled 'Sum Assigned or Discharged.'

It is only necessary now to notice the procedure requisite to prepare and register a discharge to exhaust this branch of the scheme, viz., the dealing with bonds and their transferences, and final discharges. Let it be assumed, therefore, that the bond for L.300, granted by Andrew Ferguson to Thomas Buckmaster, and numbered 104, has been paid, and is to be discharged. The conveyancer will observe the same care as in the other deeds referred to, in so far as it will be necessary for him to notice the concluding clause of the registrar's certificate on the bond; and, in like manner, as with former deeds, the registrar will mark the discharge with the number it has opposite to it, in the Presentment Book, which may be stated to be 4600, the date of presentment being 4th June 1863. The registrar will enter this number and date accordingly in the Numerical Ledger of Conveyances, along with the names of the granter and grantee, as will be found to have been done in the Specimen Sheet.

Partial discharges will be entered in the Numerical Ledger of Conveyances, in the same way as is suggested to be done in the case of partial assignations, and the other procedure therein referred to as necessary on the part of the conveyancer and registrar adhered to. Thus, if Andrew Wotherspoon's Trustees, who hold the bond by Andrew Ferguson, for L.2000, No. 102, receive payment of L.1500 of it, and the discharge is presented for registration, say 20th June 1863, the number of its entry in the Presentment Book, 4716, will appear in the Numerical Ledger of Conveyances, as it does in the Specimen Sheet.

Where clauses of restriction are in the deed, or, indeed, any other clauses which affect the security otherwise, it will be only necessary for the registrar to place a note in the column for 'Remarks' referring either to the Minute, if such clauses have been therein noticed, or to the record of the deed. The preceding suggestions, it is hoped, will be sufficient to enable a correct conception of the working of the scheme, so far as it applies to *heritable rights flowing im-*

mediately from a superior, and the dispositions thereof in security. It is now proposed to consider what will be necessary to be observed to carry out the principle in the case of subsequent conveyances *in fee*, either in whole or in part.

With this view, it may be supposed that Andrew Ferguson has sold a portion of the subjects to David Montgomerie. The conveyancer has in his possession the original title, No. 100, and in the disposition to David Montgomerie he, as in the case of the previous referred to examples, will, on describing the subjects actually conveyed, state that they are 'part and portion of all and whole that steading of ground containing 5005 square yards and 6 square feet marked No. 17, etc.,' as in the original conveyance, No 100, and conclude the description by narrating the date of its registration, and add 'the Minute of which conveyance (or disposition) is marked No. 100, and in the Numerical Ledger of Conveyances is entered on folio 50 thereof, under that number, viz., 100.' On being presented for registration, say on 6th September 1863, and entered in the Presentment Book, the registrar will, on turning up the folio 50 of the Numerical Ledger of Conveyances, enter the number it is numbered with in the Presentment Book, say 4800, and otherwise, in the same way as it will be seen to be entered in the Specimen Sheet. If conveyed under burden of previous bonds, this will be sufficiently indicated by adding in the column for 'Remarks,' the words 'under burdens therein mentioned,' or 'in the Minute,' if they be fully noticed there.

This partial conveyance will be endorsed also with the above number, and the folio in the Numerical Ledger of Conveyances, which will be opened up for it, is a new or original conveyance. This will also appear in the Minute as follows:—

No. $\frac{4800}{100}$ No. in Presentment Book and of Minute. } Folio $\frac{300}{50}$ Numerical Ledger of Conveyances.
Between the hours of 12 and 1 afternoon. 6th September 1863. Disposition by Andrew Ferguson, Soapboiler, Greenock, to David Montgomerie, Merchant, Glasgow, of a steading of ground containing 603 square yards, 5 square feet, bounded on the north by Bath Street, part of 5005 square yards, 6 square feet, marked No. 17 on a Plan, part of 7060 square yards, part of the lands of
Recorded in book 4370, folio 126.
(Signature of Registrar.)

On recording the conveyance, the registrar will conclude his certificate thus: 'The Minute of this deed having been marked and entered in the Numerical Ledger of Conveyances at folio 300, under the number of $\frac{4800}{100}$.'

The registrar in entering this deed in the Numerical Ledger of Conveyances at folio 50, will further insert in the last column of that folio reference to the transference of this deed to folio 300, as shown in the Specimen Sheet.

To conclude the details which have been deemed necessary to explain the system of registering deeds by numbers, let it be supposed that the remainder of the area hitherto unsold, belonging to Andrew Ferguson, has been disposed of to Thomas Fleming, on 5th April 1864, and that his disposition is presented for registration. The number in the Presentment Book, 5900, is endorsed on the disposition, and entered accordingly in the Numerical Ledger of Conveyances at folio 50, and as has been done with the previous partial conveyance, a new folio, say 625, opened under the same presentment number for the future transmissions, either in security or in fee.

The Minute will be as follows:—

No. $\frac{5900}{100}$ No. in Presentment Book and of Minute. } Folio. $\frac{625}{50}$ Numerical Ledger of Conveyances.
Between the hours of 11 and 12 forenoon. 5th April 1864. Disposition by Andrew Ferguson, Soapboiler, Greenock, to Thomas Fleming, Upholsterer, Glasgow, of a steading of ground containing 4402 square yards 1 square foot, bounded on the north by Bath Street, and east by Nile Street, with houses thereon part of 5005 square yards 6 square feet, marked No. 17 on a Plan, part of 7060 square yards part of the lands of . Recorded in book 4500, folio 76.
(Signature of Registrar.)

The registrar's certificate will bear, as in the previous example, that 'the Minute has been marked $\frac{5900}{100}$, and entered in the Numerical Ledger of Conveyances at folio 625, under the number $\frac{5900}{100}$.

The registrar, on entering the number of the new folio appropriated to this deed in the last column of folio 50, will complete the entries in that folio applicable to the interest of Andrew Ferguson, the original possessor of the subjects, with the exception of the bonds still existing on the property, for entering the transmissions and final discharges, of which the remainder of the folio is left blank. If the bonds had been discharged, or the subjects sold unincumbered, the registrar would have been entitled to delete the blank portion of the folio.

The main feature of the ledger system of registration is to combine, under the number of every original title, the whole transactions which affect the property to which such number is assigned. On the face of one folio of the Numerical Ledger of Conveyances, every deed affecting the property first noticed therein will be entered, in such a manner as a party desiring to investigate the title, and, at the same time, the incumbrances, can, in a very short time, obtain the information he is seeking, and that with an accuracy which cannot be afforded by any other plan. If he has the number of the original title, he will, on exhibiting it to the registrar, at once be furnished with the Numerical Ledger of Conveyances, and the folio opened to him, wherein all that he requires will be found. But even should he not possess the number of the original title, but that of a bond or any other writ recorded under the system affecting the property, he will equally be certain to obtain the particulars he may desire to be made acquainted with. For example, suppose a party not having access to the titles, but obtains from Archibald Campbell, one of the partners named in the Specimen Sheet, and to whom bond No. 104 is assigned, the number of his assignation, 500, on presenting this number to the registrar, and on his turning up that number in the Presentment Book, the registrar will be at once able to find the number of the folio in the Numerical Ledger of Conveyances, and, of course, all the information required. If the date of registration only is known, the registrar will have no difficulty in finding the folio of the Numerical Ledger from inspection of the Minute Book. It follows, therefore, that whenever any number is presented at the Sasine Office, the particular property to which such number refers will be found, and with it all the deeds affecting it; because all deeds belonging to the same title are registered on the same folio of the Numerical Ledger of Conveyances. In tracing subsequent transmissions of the property, it will only be necessary to look at the last column in the Numerical Ledger of Conveyances to see to what folio it is necessary to turn. In the Specimen Sheet it will be noticed, that Andrew Ferguson first conveys a portion of the property to David Montgomerie; and on examining the column referred to, it will be seen that the folio wherein the transactions of the latter will be found in regard to this portion is 300, and that the remainder sold to Thomas Fleming has been transferred to folio 625. Andrew Ferguson may have divided his area into twenty different areas, the transmissions of which will be shown in the folio in which his original title is entered; and on turning to the folios indicated in the last column of the folio containing his original title, the folios to which these portions have been transferred will be exhibited. Again, if the party requires to know the transactions only of the proprietor of one of these portions, he will have no difficulty in tracing the whole deeds down to the day of inquiry in a very short time; so that whether the investigation be made for the whole deeds applicable to the original area, or only for those affecting portions of it, the inquiry will be equally easy, and, at the same time, in regard to certainty, complete.

I now propose to consider the second division of the subject.

Hitherto the system which has been attempted to be explained, refers to *deeds forming original titles* and their subsequent transmissions; but there will be a large class of instruments, such as charters by progress, dispositions in fee simple, dispositions in security, assignations of bonds, notarial instruments—in short, all deeds affecting properties the possessors of which *have been infeft previous to the passing of the Prospective Act.*

To remedy this defect, it is proposed to record *Searches for incumbrances* in the way afterwards more fully explained.

A search for incumbrances forming, as it does, a very important, and even indispensable, step in a progress of titles, renders it equally valuable with the deeds themselves. They are made by parties professionally engaged in the business, and in a position of independence of the profession. Their certificates are, therefore, so far entitled to respect, from the complete absence, on their part, of any motive or interest whatever to induce them to issue a false statement of the contents of recorded deeds, whether titles or incumbrances; while an agent is liable for any loss occasioned by his not obtaining the certificate of a searcher previous to completing a purchase, or lending his client's money on the security of a property.

The importance and necessity of obtaining searches being conceded, the following details will be necessary to illustrate the operation of the principle of recording searches, in connection with the proposed numerical system of registration. Reference is again suggested to the accompanying forms of Presentment Book and Ledger of Conveyances, and particularly to form No. III.

See Form p. 63.

All deeds, therefore, being the first which have been exe-

cuted after the passing of the New Act (not original feu rights recorded under the Ledger System proposed to be introduced into the New Act as before detailed), on their being presented for registration, shall be accompanied with the original search (over the subjects conveyed in the deed to be recorded), or a duplicate thereof, under the hand of the original searcher, or a notarial copy of the original. Under any of these forms, an attestation by the agent for the proprietor will be added, to the effect that it embraces, *to the best of his knowledge*, the entries of all the recorded deeds affecting the property, in the deed accompanying the search, during the period of search.

The original or duplicate, or notarial copy of search, being so presented, will be entered in the Presentment Book in the same way as if it had been an original feu right, and in the Ledger of Conveyances, at the folio succeeding the last in which entries have been made.

The keeper of the Register will enter the presentment of the search in the Minute-Book in the following form:—

Form of Minute of Search.

No. 5000, supposed No. in Presentment Book and of Minute. } Folio 500 Numerical Ledger of Conveyances.
Between the hours of 12 and 1 afternoon. 1st January 1865. (Original search), (or duplicate), (or notarial copy of search) for incumbrances by (name or names of searchers), searchers of Public Registers (or notary-public), and certified as correct by ( ), agent for , the present or 'last proprietor' (as the case may be) of the following subjects (here insert a short description of the subjects). Recorded in book 4600 (Record Book), folio 163. (Signature of Registrar.)

The certificate of the keeper on the search will be in the same form as if it had been an original feu right, as before detailed.

The accompanying deed will be entered in the Presentment Book, Ledger of Conveyances, and Minute-Book immediately after, and be numbered 5001 from 5000 or $\frac{5001}{5000}$, thereby *constituting the number on the Search the symbolical number*, which is to be noticed by the conveyancer in all subsequent transmissions of deeds affecting the subjects described in the search, in the same way as has been recommended to be adopted in the case of an original feu right, and the transmissions thereof.

I have only to add:

(1.) That in suggesting that the search be engrossed, or copied into the Record as an ordinary deed, I have done so after mature consideration of the practicability of registering searches by means of duplicates, to be supplied by the agent for the proprietor, and bound up together, to form a distinct Record, separate from that containing ordinary writs.

The question of recording writs by duplicate, I believe, has been fully considered, and found inexpedient; and, therefore, it apppears to me, that unless it were resolved to reconsider the question of duplicate registration, with the view of adopting it, recording searches in a form different from that of ordinary deeds would create confusion, and affect the uniformity of the present mode of registration.

(2.) That in order to meet those cases which frequently happen, of an original search not being the exclusive property of the proprietor or disponer of the subjects conveyed in the accompanying deed, duplicates, or notarial copies of the whole, or of those portions of the search in which the proprietor is interested, be held as equal to the original for the purposes of being recorded. It will of course be necessary that the search be brought down to the date prior to the presentment of the deed presented with it for registration, or the date of such deed.

(3.) That the agent who shall attest the accuracy of the search, shall be that of the seller or borrower, as the case may be, and his responsibility shall only be created on it being proved that deeds not noticed in the search were known by such agent to have been recorded at the date of his attestation; and

(4.) That in recommending that searches be recorded, I have in view the connecting the past with the present and future. For it is obvious, that any system of registration under the Ledger System would be defective were it to apply only to the case of original feu rights, as it would thereby fail to embrace a large number of deeds executed after the Act, to which no symbolical reference could intelligibly be given; and, therefore, in recording searches over properties conveyed by such deeds, the public are at once put in possession of the knowledge of the title of the proprietor by referring to the search, and his subsequent dealings with the property they are individually interested in; while the conveyancer, in framing deeds affecting the property described in the recorded search, is enabled to adopt the symbolical reference or number of the search, which not only is a key to the ascertainment of the deeds recorded after the Act, but of those recorded prior to it.

25. My opinion that any such scheme would be an improvement may be inferred from—

(1.) The minuteness of detail I have entered into in my answer to the preceding question.

(2.) There will be no necessity for continuing the Abridgments, or framing Indices of either Names of Places or Parties, unless it be considered expedient to frame Indices of Persons to meet those cases where no trace to deeds can be obtained otherwise than by possessing the symbolical number which each property in future will be distinguished by.

(3.) Descriptions of properties would in many instances be done away with, in so far as it would not be necessary, after recording the feu right or search, for the conveyancer, in any subsequent deed, to do more than refer to the symbolical number in the Ledger of Conveyances, and their dates of recording, found marked on these deeds, to identify the property conveyed: and

(4.) As an evidence of my disinterested conviction of the practicability and superiority of the system above any others, I may state that its adoption would affect materially my pecuniary interest as a searcher, as it is evident that, in all cases where searches would be required to be continued over properties, the titles to which had been recorded under the New Act, a mere examination of the folio of the ledger would enable a searcher to ascertain the dates of the subsequently recorded deeds, and to copy the Minutes of them in the continued search; or the agent for the purchaser or lender might prefer to make the examination himself, and so supersede the necessity of employing a searcher at all.

I beg further to state, that the system as detailed having met with a certain amount of approbation from parties acquainted with the machinery of the Records, and of several of the profession, I have been at pains to bring it under the notice of the Commissioners, that it may receive their careful consideration, and be finally disposed of, according to their opinion of its merits. I refrain from any special reference to the objections my proposal may meet with on the ground of the machinery being cumbrous, and its utility and accuracy liable to be affected by the ignorance or carelessness of officials. This objection equally applies to the present system; while the fact of numerical symbols being adopted to a far greater extent and frequency than what would be necessary under the system in question, in many great establishments, such as Government offices, banks, insurance and railway offices, etc., as the best adapted for expediting the business therein conducted, will be a sufficient answer to those who maintain the impracticability of applying the mode suggested to registration of deeds, or who anticipate risk of error and want of safety being thereby incurred.

(4.) FORMS REFERRED TO IN MR DOUGLAS' ANSWERS.

(Form I.) Form of Presentment Book, applicable to Ledger of Heritable Conveyances.

Consecutive Number.	Date of Presentment.	Name of Deed.	Granter.	Grantee.	No. of Original Title.	Folio of Numerical Ledger.
100	1860. January 1	Dispn.	Anderson	Ferguson	100	50
101	„ „	Bond &c.	Ferguson	Sales	„	„
102	„ „	Do.	Do.	Wotherspoon	„	„
103	„ „	Do.	Do.	Crosbie's Trustees	„	„
104	„ „	Do.	Do.	Buckmaster	„	„

The following, noticed in the Numerical Ledger of Conveyances are here also inserted. The consecutive numbers between 104 and 500, and each of the following, are supposed to apply to Deeds affecting other Properties.

500	1862. May 16	Assign.	Sales	Campbell	101	50
3056	1862. Aug. 7	Not. Inst.	Wotherspoon	Wotherspoon's Trs.	102	„
4555	1863. April 10	Part. Assign.	Crosbie's Trustees	Cunningham	103	„
4600	1863. June 4	Disch.	Buckmaster	Ferguson	104	„
4716	1863. June 20	Part. Disch.	Wotherspoon's Trs.	Do.	102	„
4800	1863. Septr. 6	Part. Conveyce.	Ferguson	Montgomery	100	„
5900	1864. April 5	Conveyce.	Do.	Fleming	100	„

Mode of Entering Searches, etc.

5000	1865. January 1	Search	Name of Borrower	or Name of Purchaser (as the case may be)	...	601
5001	„ „	Dispn.	Do.	or Do.	5000	601

(Form II.) Form of Ledger of Conveyances of Heritable Rights.

100. *County of Lanark.* *Parish of the Barony of Glasgow.* *Folio* 50.

No. of Presentment and Minute Book.	Name of Deed.	No. of Presentment Book transferred.	Date of Recording.	Book of Record.	Folio.	Name of Granter.	Name of Grantee.	Leading Name of Lands.	Sum in Bond. £ s. d.	Sum Assigned or Discharged. £ s. d.	Remarks.	Folio of Reference to next Transference of Original Title.
100	Feu Dispn.	...	1862. January 1	3000	70	John Anderson	Andrew Ferguson	Subjects in Bath St. and Nile St., Glasgow	...	...	...	...
101	Bond & Disp.	100	,, ,,	3000	76	Andrew Ferguson	Joseph Sales	Ditto	1000 – –	...	...	...
102	,,	100	,, ,,	3000	85	Do.	Andrew Wotherspoon	Ditto	2000 – –	...	...	...
103	,,	100	,, ,,	3000	93	Do.	John Crosbie's Trustees	Ditto	3000 – –	...	...	...
104	,,	100	,, ,, 1862.	3000	105	Do.	Thomas Buckmaster	Ditto	300 – –	...	...	...
500	Assignation	101	May 16 1862.	3020	12	Joseph Sales	Archibald Campbell	Ditto	1000 – –	1000 – –	...	...
3056	Not. Inst.	102	August 7 1863.	4056	109	Andrew Wotherspoon	Andrew Wotherspoon's Trustees	Ditto	2000 – –	2000 – –	...	...
4555	Part. Assign.	103	April 10 1863.	4260	170	John Crosbie's Trustees	Andrew Cunningham	Ditto	3000 – –	1000 – –	...	...
4600	Discharge	104	June 4 1863.	4300	56	Thomas Buckmaster	Andrew Ferguson	Ditto	300 – –	300 – –	...	...
4716	Part. Disch.	102	June 20 1863.	4302	79	Andrew Wotherspoon's Trustees	Andrew Ferguson	Ditto	2000 – –	1500 – –	...	...
4800	Part. Conveyce.	100	Septr. 6 1864.	4370	126	Andrew Ferguson	David Montgomery	Portion of ditto	...	...	Under Burden as therein mentioned	300
5900	Conveyance.	100	April 5	4500	76	Andrew Ferguson	Thomas Fleming	Remaining portion of do.	...	...	Under Burden as therein mentioned	625

(Form III.) Mode of Entering Searches in Ledger of Conveyances, Referred to at Page 67 of Answers.

5000. *County of* *Parish of* *Folio* 601.

No. of Presentment and of Minute Book.	Name of Deed.	No. of Presentment Book transferred.	Date of Recording.	Book of Record.	Folio.	Name of Granter.	Name of Grantee.	Leading Name of Lands.	Sum in Bond.	Sum Assigned or Discharged.	Remarks.	Table of Reference to next Transference of Original Title.
5000	Search	1865. Januar.	1865. January 1	4600	163	Name of Borrower (as the case may be)	or Name of Purchaser.	Subjects in Sauchiehall Street, Glasgow	...	...	...	...
5001	Dispon.	5001	,, ,,	4600	170	Ditto	or Ditto	Ditto	...	...	...	...

(5.) Answers by G. B. Robertson, Esq., Deputy-Keeper of the Records.

24. I have examined and maturely considered the scheme here referred to, which I understand to be that printed and explained in the paper entitled 'Suggestions on Searches,' which forms the Appendix to Report on Searches, 1857, by the Committee of Writers to the Signet.

My opinion of the scheme referred to will appear from next answer.

25. I do not think that the scheme referred to would be any improvement upon the system of the Abridgements and Indices introduced by Mr Thomson. On the contrary, I think it a scheme quite unworkable in its nature, and otherwise unsafe and objectionable.

My preference for the system of the Abridgments and Indices arises from the fact, that the Abridgments present to the notice of a searcher, in the most convenient and accessible shape, the whole contents of the Registers of Sasines (General and Particular)—these contents being gathered together from the Records page by page, and placed in chronological order, and in county arrangement, under a plan, and with safeguards and checks for ensuring accuracy in the process, which, as nearly as possible, preclude all risk of error or omission.

The consultation of the Abridgments, again, is facilitated by the construction of their relative Indices, which is a separate and extremely simple process, involving merely the extracting of each name from the several entries in the Abridgments,—accuracy in this work in the necessary references, and in the subsequent alphabetical arrangement being easily ensured by the ordinary precautions of careful and repeated collation. A search in the Abridgments, by means of their relative Indices, comes, therefore, to be really a search of the Records themselves, fully more thorough and exhaustive than a search conducted by means of the Minute Books; and, in judging between the respective advantages and disadvantages of the two systems now under consideration, it is very important to observe, with reference to the Abridgments and Indices, that strict accuracy in their construction is a matter entirely within the power of Record Officers to attain, *independent of all or any aid from conveyancers or others out of doors.*

Very different, however, would be the case under the scheme which is proposed to be worked out by means of numbers given to the recorded writs, in order that these numbers may be referred to by conveyancers and others in all future deeds affecting the same, or parts of the same, properties, and flowing from the same parties.

Here, at the very outset of the plan proposed, is involved the admission, that it hinges entirely upon *extrinsic aid and assistance to be drawn from conveyancers;* and here, accordingly, *with conveyancers lies, in the first instance, the responsibility* for the accurate use of the numbers, which is essential to the success of the whole scheme. To attain this accuracy, upon their part, the scheme must start, as it does, with a proposal of an extremely objectionable nature, viz., the proposal of an enactment declaratory of the nullity of any conveyance which shall omit the specification of the number or numbers assigned to the granter's title, or which shall supply them inaccurately. Without such an enactment, the whole scheme must fall to the ground; and little need be said condemnatory of a plan dependent for success upon a provision of so stringent a character in relation to a matter of the kind. It may just be remarked, that in no one particular are parties more likely to err, than in supplying references to dates or numbers. Every-day experience will justify this statement, and accordingly, if it be objectionable at any time to multiply or add to the number of the requisites essential to deeds of conveyance, how strong the objection when urged with reference to a particular detail proposed to be added, the full scope and object of which is so little likely to be kept in view by the conveyancer, and in which even when its purpose is fully known and appreciated, error is so extremely apt to arise.

Passing, however, from the objection now stated to the proposed scheme, reference has still to be made to its further provisions. The responsibility for the accurate application of the proposed numbers must rest, as has been seen, in the first instance, with conveyancers themselves; and secondly, it has to be remarked, that a similar responsibility must attach to the Record keeper. Were he to assume in every case the accuracy of the numbers furnished, as indicative of the properties affected by the deeds presented, his duty would be comparatively light; but as this would afford no guarantee whatever for accuracy in the result aimed at, it cannot be supposed that he would stand acquitted of his responsibility, without the application of some check upon the correctness of the information from which the Ledger or Search Book is proposed to be framed. Such a check could only be exercised by a very laborious process, viz., by a careful scrutiny and comparison of the descriptions in each deed presented, with the descriptions contained in the last recorded titles as indicated by the proposed numbers; and this with the view of ascertaining that the subjects conveyed by the deeds presented were really the same, or parts of the same properties, as the numbers signified. The labour, the trouble, and the responsibility thus involved, would be excessive, and such, indeed, as no Record keepers could possibly undergo; while even supposing it practicable for the keeper to apply the necessary check, a further responsibility would still attach to him in another way, viz., for the accuracy with which, by means of the numbers, the several entries in the Minute Books would require to be posted up, and entered in their proper places in the Ledger or Search Book.

From the foregoing detail it is evident, that the value of the proposed Ledger or Search Book as indicative of the contents of Registers as regards each separate property, must depend upon the accuracy,

1st, Of conveyancers generally in preparing the deeds, and in supplying the necessary numbers;

2d, Of the Record Keepers in checking these references, and in repeating them in the Minutes; and

3d, Of the Record Clerks in posting up in the Ledger or Search Book, without omission, and according to their proper numbers, the several entries in the Minute Book.

In each of these quarters may inaccuracies be apprehended from time to time, and reasonably so, when it is considered that numbers can scarcely ever be brought into operation without risk of error. These inaccuracies, however slight in themselves, would suffice to vitiate, or at any rate to embarass and prevent the working of the entire scheme; and I can, therefore, by no means subscribe to the dictum of its propounders, that it is calculated to diminish the field of error, its direct tendency being, in my judgment, precisely the reverse.

I am unable, besides, to see how the Ledger or Search Book could avail an ordinary searcher, and enable him to acquit himself of his responsibility for a faithful examination of the Records as regarded particular subjects. In no sense could he be prepared to say, after examination of its pages, that he had searched the Register; for, as the Ledger would present a mere selection of entries, and be just the result of an attempt to make up searches of incumbrances from day to day, with reference to every property in the country, the responsibility for the accuracy of the entries in the Ledger, or in other words, the searches, could be assumed by no one except by the party charged with the duty of posting up the accounts from the Minute or Day Books. The several accounts in the Ledger, besides, could never show the dates to which they had been brought up; and granting that information might be obtained from the Minute Book as to this particular, any other party than the posting clerk could never be in a position to testify to a search completed to a given date; for, from the pages of the Ledger, he could not receive the guarantee or assurance against omissions in the posting up, which subsequent collation of the Ledger with the Minute Book (a thing, by the way, which I reckon to be impossible) could alone afford.

VII.—STATEMENT OF THE ANNUAL REVENUE AND EXPENDITURE of the Five Departments connected with the Registration of Land Rights in Her Majesty's General Register House, Edinburgh, for the Year 1861.—(*Report, p.* 44.)

EXPENDITURE.

I. Lord Clerk Register's Department.

Note.—The Lord Clerk Register's Salary is now abolished.			
Deputy-Clerk Register's Salary	L.500	–	–
Deputy-Keeper of Records do.	600	–	–
Note.—The above are the full Salaries of these officers, although their superintendence extends to other Records than those of Land Rights.			
Two Clerks	247	10	–
Note.—The retiring allowance to late Deputy-Keeper of Records has fallen by his death, and therefore not carried out—L.600.			
Expense of Record Materials, including Stationery and Binding New Records, as estimated for by Deputy-Keeper	300	–	–
Proportion of Deputy-Clerk Register's General Estimate for Heating, Lighting, Cleaning, and Servant's Wages belonging to this Department	110	–	–
Incidental Expenses estimated for by the Deputy-Keeper of Records	35	9	4
Deputy-Clerk Register's General Estimate for Binding and Repairing Old Records within his Department, L.180, whereof there may be stated as applicable to the Registers of Land Rights	50	–	–
	L.1842	19	4
Income over Expenditure, carried to Abstract	2352	12	1
	L.4195	11	5

II. Searching Department.

Salaries of Four Searchers	L.1600	–	–
Do. of Superintendent of Literary and Antiquarian Department	300	–	–
Do. of Four Clerks	460	–	–
Incidental Expenses	25	–	–
	L.2385	–	–
Income over Expenditure, carried to Abstract	412	–	8
	L.2797	–	8

III. Abridging Establishment.

The Expenditure on this service during the Year 1861-62, defrayed from sums received from Exchequer, as opposite, was	L.1324	18	10

Note.—Besides the sum carried out, there was an additional grant of L.300 made in 1860 and 1861 for a special purpose.

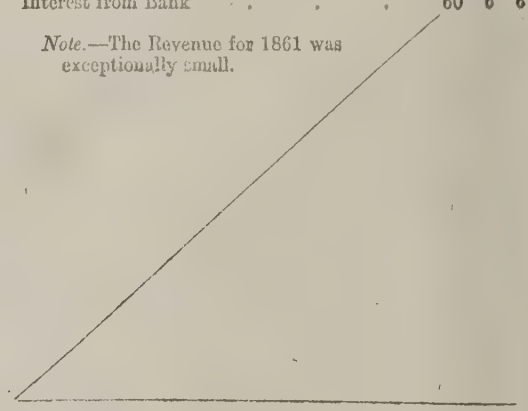
IV. The Sasine Office.

Amount of Salaries to Keeper, Assistant, and Salaried Clerks	L.2557	10	–
Amount of Allowances to Engrossing Clerks	1549	14	8
Amount of Expenses for Record Volumes and Minute Book	334	13	–
Incidental Expenses, including Cleaning, Heating, Postages, etc.	86	–	2
	L.4527	17	10
Income over Expenditure, carried to Abstract	5003	–	2
	L.9530	18	–

REVENUE.

I. The Lord Clerk Register's Department.

Note.—This Revenue arises in part from other Records than those of Land Rights; but it is impossible to distinguish the amounts accruing from the different classes of Registers.			
From Fees on Extracts	L.454	10	–
Do. on Records	807	7	11
Do. on Searches	2873	7	–
Do. from Sasine Office.			
The amount receivable under this head not now paid to the Deputy-Keeper of Records. See No. IV.			
Interest from Bank	60	6	6
Note.—The Revenue for 1861 was exceptionally small.			
	L.4195	11	5



II. Searching Department.

From Searching Fees on Searches issued, these constituting the sole Revenue of this Department	L.2797	–	8

Note.—The Revenue in this Department for 1861 was also exceptionally small.

III. Abridging Establishment.

Amount received from Exchequer for this service, Year 1861-62, carried to Abstract	L.1324	18	10

IV. The Sasine Office.

By Amount of Fees received for recording Writs	L.9311	5	–
By Amount of Fees received for Searches	219	13	–
Note.—(1.) Number of Writs recorded in General Register 3309			
Number of Writs recorded in Particular Register 2733			
6042			
(2.) Estimated number of Searches 1733			
	L.9530	18	–

EXPENDITURE.

V. Horning, Inhibition, and Adjudication Office.

Keeper's Salary	L.600	–	–
Clerks, for Writings	91	11	–
Incidental Expenses	17	18	8
	L.709	9	8

REVENUE.

V. Horning, Inhibition, and Adjudication Office.

Fees received—

	Hornings.	Inhibitions.	Adjudications.	
Fees of Registration	L.46 6 –	L.145 13 –	L.51 9 6	
Fees of Searches	1 7 6	206 17 6	171 12 6	
Miscellaneous	...	...	...	L.2 4 –
	L.47 13 6	L.352 10 6	L.223 2 –	L.2 4 –
Total Receipts				L.625 10 –
Expenditure over Income, carried to Abstract				83 19 8
				L.709 9 8

ABSTRACT.

I. To Surplus on Lord Clerk Register's Department	L.2352	12	1
II. Do. Searching Department	412	–	8
III. To Expenditure on Abridging Department	1324	18	10
IV. To Surplus on Sasine Office	5003	–	2
	L.9092	11	9

III. By Sums received from Exchequer for Abridging Department	L.1324	18	10
V. By Deficiency in Office for Hornings, etc.	83	19	8
By Balance, being net surplus Revenue on Five Departments	7683	13	3
	L.9092	11	9

THE STATE OF THE REGISTERS OF LAND RIGHTS IN SCOTLAND.

REPORT of the COMMISSIONERS appointed to Inquire as to the STATE of the REGISTERS of LAND RIGHTS in the COUNTIES and BURGHS of SCOTLAND. With Appendix of Documents, etc.

Presented to both Houses of Parliament by Command of Her Majesty.

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1863

TITHE COMMISSION.

COPY of the REPORT of the TITHE COMMISSIONERS to Her Majesty's Secretary of State for the Home Department, dated 31st January 1863.

[For the Year 1862.]

Presented to both Houses of Parliament by Command of Her Majesty.

Copyhold, Inclosure, and Tithe Consolidated Commission,
30th January 1863.

SIR,

IT is our duty to forward to you the Report of our Proceedings in the Tithe Department of this Consolidated Commission to the close of the Year 1862.

We have received 7,070 Agreements and confirmed 6,778.

We have made 5,647 Drafts of compulsory Awards, and confirmed 5,449.

In 12,227 Districts, as will be seen from the above statement, the Tithes have been commuted by confirmed Agreements or confirmed Awards.

In 413 of these Districts the Rentcharges have been disposed of by Redemption or Merger.

We have received 11,786 Apportionments, and confirmed 11,780; of which 2 were confirmed during the year 1862.

We have made 2,778 altered Apportionments, and confirmed 2,402; and of these 168 have been received and 129 confirmed during the year 1862.

We have received 929 Applications for the Exchange of Glebe Lands, and confirmed 823 of such Exchanges; and of these 59 Applications were received and 32 Exchanges confirmed during the past year.

We have received 463 Applications for the Redemption of Rentcharge, and have completed 319 of such Redemptions; and of these 110 were received, and 37 completed during the year 1862.

We have received 6 Applications to convert variable Corn rents payable under local Acts of Parliament into Rentcharges to be henceforth payable in like manner as ordinary Tithe Rentcharges, and have completed Awards in 2 of these cases.

At the close of 1862 we had confirmed 14,595 distinct Mergers of Tithes or Rentcharges.

We annex an Abstract.

We have the honour to be,
Sir,
Your very obedient Servants,
G. DARBY.
G. RIDLEY.
G. W. COOKE.

To the Right Honourable
The Secretary of State for the Home Department,
&c. &c. &c.

ABSTRACT OF TITHE PROCEEDINGS.

greements received		7,070
Do. confirmed	6,778	
Do. superseded by awards	291	
		7,069
Do. in progress		1
wards made		5,647
Do. confirmed	5,449	
Do. superseded by agreements	165	
		5,614
Do. in progress		33
otal number of agreements and awards confirmed		12,227
the districts in which the rentcharges have been disposed of by merger or redemption	413	
pportionments received	11,786	
		12,199
Tithe districts in which the rentcharges remain to be disposed of		28
pportionments received		11,786
Do. confirmed		11,780
Do. in progress		6
ltered apportionments received		2,778
Do. confirmed	2,402	
Do. withdrawn	182	
		2,584
Do. in progress		194
pplications for the exchange of glebe lands received		929
xchanges confirmed	823	
Do. withdrawn	58	
		881
Do. in progress		48
pplications for the redemption of rentcharge received		463
edemptions confirmed		319
Do. in progress		144
pplications for the conversion of corn-rents received		6
wards completed		2
Do. in progress		4
lergers of tithe or rentcharge received		14,596
Do. confirmed		14,595
Do. in progress		1

1st December 1862.

TITHE COMMISSION.

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[For the Year 1862.]

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Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

1863.

UL 26 JUN 1963